

**LOCAL  
GOVERNMENT LAW  
AND  
ADMINISTRATION**

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**ANNUAL CONTINUATION VOLUME, 1947**



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# LOCAL GOVERNMENT LAW AND ADMINISTRATION IN ENGLAND AND WALES

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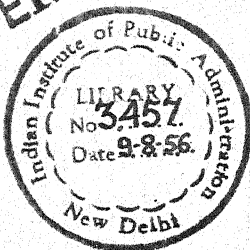
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## HALSBURY'S COMPLETE STATUTES OF ENGLAND

References to Public Acts of Parliament are followed by a reference to the volume and page at which the Act or section of the Act appears in Halsbury's Complete Statutes of England. Thus:

The Local Government Act, 1933; 26 Halsbury's Statutes 295.

## ALL ENGLAND LAW REPORTS

After cases heard since February, 1936, references are given to this series of reports thus:

*Camkin v. Bishop*, [1941] 2 All E. R. 713.

## PUBLISHERS' NOTE

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FOR the last nine years annual volumes have been issued, one for each calendar year, but in 1947 the legislation affecting local authorities became so great that it has been decided to cover in the present volume the period from the beginning of that year to September 30, 1947. This course has the advantage of enabling readers to have in their hands the legislation of the Parliamentary Session which ended in October, 1947 (comprising the great bulk of the legislation for the calendar year), several months before it would otherwise be available in this series, and has also enabled the subject-matter to be kept within the compass of a single volume. Even so, the present volume will be found to be substantially longer than any of its nine predecessors, and it is hoped that the new arrangement will meet with the approval of the local government service and the legal profession generally.

A similar classification of titles has been followed to that of previous years, emergency legislation being dealt with under the various headings. Among the Statutes of 1947 are five of major importance to local authorities. First, the Town and Country Planning Act, 1947, with its 120 complicated sections and eleven equally complicated Schedules, shifts the emphasis of town and country planning law from the restrictive to the constructive and amends the general law of compensation on the compulsory acquisition of land. Parts of the Agriculture Act, 1947, touch the functions of local government at various points, as, for instance, in regard to smallholdings, county agricultural executive committees, land drainage and pest control, while in a somewhat similar way the Transport Act, 1947, is of importance both as regards passenger road transport undertakings and harbour undertakings. On a more specific basis are the Fire Services Act, 1947, which transfers the fire services back to local authority control on the dissolution of the National Fire Service, and the Electricity Act, 1947, which takes away from local authorities their electricity supply undertakings on the transfer to public ownership of the whole of the supply side of the electricity industry. Other statutes of importance which are printed in this volume are the Civic Restaurants Act, 1947, the Births and Deaths Registration Act, 1947, the Forestry Act, 1947, and the Pensions (Increase) Act, 1947.

In connection with the Town and Country Planning Act, 1947, the editors have to some extent drawn upon the annotation of Mr. H. A. Hill, M.A., and Mr. D. P. Kerrigan, B.L., on that Act, while in the case of the agricultural titles they have had at their disposal the book on the Agriculture Act, 1947, by Mr. Anthony Cripps, D.S.O., T.D., M.A. The Preliminary Note to the Fire Services Act, 1947, is largely the work of Mr. J. M. Hawksworth, LL. B., and the editors gratefully acknowledge their indebtedness to these learned writers.

Important Statutory Rules and Orders included in this volume are the Police Regulations, 1947, which consolidate with amendments thirty-one different groups of regulations made from 1920 onwards, the numerous orders and regulations made under the National Health Service Act, 1946, the Control of Borrowing Order, 1947, the Preserves Order, 1947, and various regulations on the subject of pensions.

BUTTERWORTH & Co. (Publishers), LTD.

March 1948

## LIST OF ABBREVIATIONS

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All England Reports .. .. .	All E.R.
Attorney-General .. .. .	A.-G.
Brothers .. .. .	Bros.
Company .. .. .	Co.
Corporation .. .. .	Corpn.
Home Office .. .. .	H.O.
Justices .. .. .	JJ.
Limited .. .. .	Ltd.
London County Council .. .. .	L.C.C.
Local Government Act .. .. .	L.G.A.
Medical Officer of Health .. .. .	M.O.H.
Ministry of Agriculture and Fisheries .. .. .	M. of A.
Ministry of Health .. .. .	M. of H.
Ministry of Transport .. .. .	M. of T.
Provisional Rules and Orders .. .. .	P.R. & O.
Public Health Acts .. .. .	P.H.A.
Railway Company .. .. .	Rail. Co.
Rating and Valuation Act .. .. .	R. & V.A.
Rural District Council .. .. .	R.D.C.
Statutory Instruments .. .. .	S. I.
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Brookes v. London Passenger Transport Board, [1947] 1 All E. R. 506	2	Hogg v. Scott, [1947] 1 All E. R. 788.—See title POLICE.	
		R. v. Ludlow, <i>Ex parte</i> Barnsley Corp., [1947] 1 All E. R. 880 -	3

## CASES

*Negligence—Licensee—Infant—Recreation ground—Injuries caused by defective swing—Local authority ignorant of defect—Liability.*

The plaintiff, a child of nine, while playing in the playground in one of the defendant corporation's public parks, was boarding a swing when her finger, the top joint of which was later amputated, was caught between the unguarded lug and socket of a checking device designed to prevent the swing going too far. The defect was one which could easily have been remedied. The defendants, who had no knowledge of the danger, had obtained the swing from an old-established firm of manufacturers, and the model was one which had been in use for years without any previous accident of a similar nature :—

*Held* : the defendants owed the plaintiff the obligation of a licensor to a licensee, and since, as such, they were not bound to do more than warn her of dangers actually known to them, no liability attached to them.—*SUTTON v. BOOTLE CORPN.*, [1947] K. B. 359 ; [1947] 1 All E. R. 92 ; 177 L. T. 168 ; 111 J. P. 81 ; 45 L. G. R. 162, C. A. [1]

*Limitation of actions—Public authority—Joinder as third party—Limitation Act, 1939 (c. 39), s. 21—Law Reform (Married Women and Tortfeasors) Act, 1935 (c. 30), s. 6 (1) (c).*

Two lorries, one driven by the plaintiffs' servant and the other by the defendant, came into collision, as a result of which passengers in the defendant's lorry were injured. The defendant, who was driving an Army lorry at the time of the collision, as a servant of a public authority was entitled to protection under s. 21 of the Limitation Act, 1939, which provides that no action shall be brought against any person for any act done in execution of a public duty unless it is commenced before the expiration of one year from the date on which the cause of action accrued. The plaintiffs alleged that the accident was due wholly or in part to the defendant's negligence, and they sought a declaration that, in the event of the persons injured succeeding in an action for negligence against them, they would be entitled to claim an indemnity or contribution from the defendant as a third party, even though more than twelve months had then passed since the cause of action had accrued :—

*Held* : proceedings by a defendant against a third party were independent of and separate from the proceedings by the plaintiff against the defendant, and the Limitation Act, 1939, only started to run in favour of a third party

when the defendant had been found to be liable to the plaintiff, and, therefore, the plaintiffs were entitled to the declaration.

*Merlihan v. A. C. Pope, Ltd. and J. W. Hibbert (Pagnello Third Party)* ([1946] K. B. 166; [1945] 2 All E. R. 449), *discussed*.—HORDERN-RICHMOND. LTD. v. DUNCAN, [1947] K. B. 545; [1947] 1 All E. R. 427; [1947] L. J. R. 1024; 176 L. T. 332; 63 T. L. R. 193. [2]

*Negligence—Railway train—Underground train—Duty of company's servants to shut doors before departure of train—Contributory negligence.*

The plaintiff entered the carriage of an underground train belonging to the defendant Board, and the train left the station with the door open. The plaintiff stood with his back to the doorway, holding on to a rail provided for the purpose. He had no experience of underground trains without automatic doors and had no reason to suppose the door was not shut. The train swayed on a curve, the plaintiff lost his balance, and fell out of the train and was injured :—

*Held* : the defendant Board were negligent in not ensuring that the train door was closed before the train started, and there was no contributory negligence on the part of the plaintiff.—BROOKES v. LONDON PASSENGER TRANSPORT BOARD, [1947] 1 All E. R. 506. [3]

*Carriers—Carriage of goods—Implied warranty that goods not dangerous—Disposal of refuse by barge—Warranty negatived by contract—Negligence—Public Health (London) Act, 1936 (c. 50), ss. 92, 304.*

Under a contract with the defendants, the plaintiffs provided barges at the defendants' wharf for the reception and removal of refuse. The tipping into the barges was screened to prevent the dispersal of smell and dust, and the plaintiffs' lighterman was unable to see what was tipped in. The defendants' foreman could see, however, and he noticed that one load of "trade refuse" included barrels containing "swarf" or metal shavings. He had no reason to think the swarf dangerous and raised no inquiry, but, in fact, it was mainly magnesium, which, when brought into contact with heat generated by other refuse, caught fire in two barges, started a series of explosions, and caused damage. By cl. 13 of the contract : "the council shall not be held responsible for any damage or mischief caused by or through the refuse after it has been shot for disposal into the contractors' barge or barges," and by cl. 16 : "the contractors shall bear all risk and responsibility of whatever kind which shall attend or result from the execution of this contract" :—

*Held* : (i) the principle of *Rylands v. Fletcher* (1868) (L. R. 3 H. L. 330) did not apply to the shooting of the swarf into the barges.

(ii) there being nothing in the appearance of the swarf to indicate to the foreman that it was dangerous, there was no negligence on the part of the defendants in allowing it to be shot into the barges.

(iii) while the balance of authority was in favour of the view that there is an implied warranty that goods delivered for carriage are safe to be carried, irrespective of whether the person delivering the goods for carriage knows of the danger and irrespective of whether the person to whom they are delivered is under a common law or statutory duty to carry them, that doctrine could not be suitably extended to a case of this kind having regard to the terms of the contract.

(iv) even if the warranty were implied in this case, yet the liability for the breach was negatived by the express terms of the contract.—BURLEY, LTD. v. STEPNEY CORPN., [1947] 1 All E. R. 507; 176 L. T. 535; 111 J. P. 258. [4]

*Limitation of actions—Amendment of statement of claim—Action against public authority alleging negligence in the conduct of a hospital—Allegation in statement of claim that authority responsible for negligence of house surgeon and surgeon—Amendment to include responsibility for pharmacist—New particular and not new cause of action—Public Authorities Protection Act, 1893 (c. 61), s. 1—Limitation Act, 1939 (c. 21), s. 21.*

At the trial of an action against a public authority alleging negligence in the conduct of a hospital, it being alleged that the authority was responsible for the negligence of the house surgeon and the operating surgeon, the plaintiff sought to amend the statement of claim by including a charge that the council was also responsible for the negligence of the pharmacist. The council contended that such an amendment would be stating a new cause of action and could not be allowed, under the Public Authorities Protection Act, 1893, s. 1 (see now Limitation Act, 1939, s. 21) :—

*Held* : since the cause of action was the negligence of the council in the conduct of a hospital and the allegations that it was vicariously responsible for certain named persons were only by way of particulars, the amendment was not a new cause of action, but only a new particular and could be allowed.

*Marshall v. London Passenger Transport Board* ([1936] 3 All E. R. 83), and *Batting v. London Passenger Transport Board* ([1941] 1 All E. R. 228), distinguished.—*COLLINS v. HERTFORDSHIRE COUNTY COUNCIL*, [1947] K. B. 598; [1947] 1 All E. R. 633; [1947] L. J. R. 789; 176 L. T. 456; 111 J. P. 272; 63 T. L. R. 317; 45 L. G. R. 263. See also title HOSPITALS, *post*. [5]

*National service—Reinstatement in civil employment—Decision of umpire—Dissatisfaction of employer—Certiorari—Reinstatement in Civil Employment Act, 1944 (c. 15), ss. 1 (1), 9 (1), (2), 10 (1), (2).*

A deputy umpire to whom an appeal under s. 10 (1) of the Reinstatement in Civil Employment Act, 1944, is brought from a determination of a reinstatement committee has power to decide the facts which give him jurisdiction, and *certiorari* will not lie to bring up and quash an order of a deputy umpire unless it is in excess of his jurisdiction.—*R. v. LUDLOW, Ex parte BARNSELY CORPN.*, [1947] K. B. 634; [1947] 1 All E. R. 880; [1947] L. J. R. 1063; 111 J. P. 329; 45 L. G. R. 334. [6]

## AGRICULTURE

*See also* ALLOTMENTS AND SMALLHOLDINGS; DESTRUCTIVE INSECTS AND PESTS; LAND DRAINAGE

STATUTES :—	PAGE	ORDERS, CIRCULARS AND MEMORANDA :—	PAGE
Agriculture Act, 1947, ss. 9–11, 71–72, 75–76, 92–94, 102–103, 108–111, Scheds. IX, X, XIII –	3	Agriculture Act, 1947 (Commencement) Order, 1947 – – –	22
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## STATUTES

### AGRICULTURE ACT, 1947

(10 & 11 Geo. 6, c. 48)

#### PRELIMINARY NOTE

This Act, which comes into operation on varying dates to be specified by Order in Council (see note to s. 111), is a comprehensive measure of 111 sections and

thirteen Schedules intended to implement the Government's policy of raising the standard of the agricultural industry in the interests of stability and efficiency, so that the industry, which provides employment for a million and a quarter men and women and covers four-fifths of the acreage of the United Kingdom, may be properly equipped to play the important part allotted to it in the plan for national recovery.

Only a comparatively small number of the provisions of the Act are of direct concern to local authorities and these provisions have been grouped, according to the specific aspects of agriculture with which they deal, under the titles ALLOTMENTS AND SMALLHOLDINGS, DESTRUCTIVE INSECTS AND PESTS, and LAND DRAINAGE, *post*, while the present title is utilised for the residue.

The principal subjects grouped together under this title are, first, the rules of good estate management and good husbandry (ss. 9-11); next, the establishment of County Agricultural Executive Committees to replace the War Agricultural Executive Committees which played such a leading part in the nation's agricultural economy during the late war (ss. 71, 72, 75, 76); then, as a subsidiary to that, the scheme for providing agricultural goods and services (s. 103); the provisions for the compulsory purchase and hiring of land (ss. 92-94); the destruction of injurious weeds (s. 102); various sections of general application, and the relevant parts of the Schedules to the Act.

The purpose of the rules of good estate management and good husbandry is to secure that *owners* of agricultural land manage it in accordance with the former and that *occupiers* of agricultural units farm them consistently with the latter. Though these so-called "rules" are laid down in ss. 10 and 11, those sections do not so much state rules as indicate a standard which is deemed to fulfil the responsibilities of ownership or occupation as viewed by the Act. Before the commencement of the present Act the duties of an owner could be epitomised in the maxim *sic utere tuo ut alienum non laedas*; that is to say, an owner of land might be liable for nuisance, but in the absence of contractual duty he was under no liability at law to manage his estate in any particular way. By referring to "responsibilities" to manage a farm in accordance with certain rules, the Act assumes the existence of such responsibilities; save by implication it does not impose duties, though it creates means for securing that the required standards are attained and maintained. The means available are the making of supervision orders and consequent power to give directions behind which lie the sanctions of compulsory acquisition and dispossession. Power also exists to issue directions without making supervision orders.

Early in the war War Agricultural Executive Committees were appointed as a purely temporary expedient for all the administrative counties in England and Wales, and the Minister of Agriculture and Fisheries delegated to those Committees wide powers which he possessed under the Defence (General) Regulations, 1939; S. R. & O., 1939, No. 927, as amended (see the Cultivation of Lands Order, 1939; S. R. & O., 1939, No. 1078). In addition, certain statutory functions of county councils exercised by their agricultural committees (see *infra*) were transferred to the War Agricultural Executive Committees (Defence (Agriculture and Fisheries) Regulations, 1939; S. R. & O., 1939, No. 1303, regulations 28 (2)). As with many other agencies that proved their usefulness during the war, it was decided to make the Committees, with the necessary modifications, a permanent feature of the agricultural organisation of the country; and accordingly s. 71 of the Act formally establishes, in accordance with the provisions of Sched. IX, for each administrative county (except the County of London) a County Agricultural Executive Committee (the word "War" being dropped) charged with the promotion of agricultural development and efficiency as directed by the Minister and with the exercise of ministerial functions by delegation in accordance with regulations under s. 72.

The new County Committees are to consist of not more than five members appointed directly by the Minister and of seven other members appointed by him from panels of persons nominated by representatives of landlords, farmers and workers. Details of the constitution of the Committees and the appointment of members appear in paras. 7-12 of Sched. IX. Provision is made for two or more counties to be treated as one for Committee purposes where this can conveniently be done (s. 71 (2) and Sched. X); for regulating the position where land falls partly in the area of one Committee and partly of another (s. 75); for delegation to sub-



committees and for the appointment of district committees within the county areas (s. 71 (3), (4)). The functions of War Agricultural Executive Committees under any enactment are transferred not directly to the new Committees but to the Minister (s. 71 (7)), and are accordingly included in the functions that may be delegated to the former under s. 72. In view of the new set-up the agricultural committees of the various counties and county boroughs appointed under Part III of Ministry of Agriculture and Fisheries Act, 1919 (3 Halsbury's Statutes 453) are felt to be redundant and accordingly are dissolved (s. 76 (1)).

S. 103, in empowering the Minister to make schemes for providing farmers with goods and services for added efficiency and extra production, enables one of the most important functions of the War Agricultural Executive Committees to be continued by the Minister and, on delegation by him, by the new County Agricultural Executive Committees.

The next subject for brief consideration is that of compulsory acquisition. Various powers of acquiring land by compulsory purchase or hiring are conferred on the Minister and smallholdings authorities by the Act, those which concern local authorities being the powers under ss. 48 and 50 to acquire land for smallholdings (see title ALLOTMENTS AND SMALLHOLDINGS, *post*). In cases of compulsory purchase in pursuance of these powers the procedure of the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Halsbury's Statutes 52) is to apply, subject to the exclusion of s. 2 of that Act, which allows speedy acquisition in urgent cases. The compensation payable is that applicable to compulsory purchase by public authorities under the existing law, as recently modified by Part V of the Town and Country Planning Act, 1947 (see title LAND, ACQUISITION, SALE, ETC., *of, post*).

The procedure for compulsory hiring, to be prescribed by regulations under s. 93, is to be based on the procedure for compulsory purchase. In cases of compulsory hiring, however, the term is not to exceed thirty-five years (s. 94 (1)), and provision is made for resumption of possession in proper cases subject to notice and to the adjustment of rent when part only of the land is released from the hiring (s. 94 (3)). Land compulsorily hired may still be the subject of compulsory purchase by the hiring authority (s. 94 (2)).

Lastly, the Act amends the law as to injurious weeds. The Minister could, before the Act came into operation, serve notice upon the occupiers of land requiring the destruction of particular kinds of weed specified in the Schedule to the Corn Production Acts (Repeal) Act, 1921 (1 Halsbury's Statutes 77), with penalties for failure to comply. The Minister could also arrange for the destruction of the weeds, recovering from the occupiers the cost of so doing. S. 102 of the present Act, while retaining these provisions, allows the Minister to specify additional weeds as if they were included in the original Schedule. Powers of the Minister in this connection may be delegated to county councils instead of to the now defunct agricultural committees of those councils as heretofore (s. 76 (1), (2)).

The subsidiary provisions, relating to regulations under the Act, the interpretation of terms used, the enactments to be repealed and the dates of commencement of the various provisions of the Act, are explained in the notes to the sections. [7]

## ARRANGEMENT OF SECTIONS

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## PART II

## GOOD ESTATE MANAGEMENT AND GOOD HUSBANDRY

**9. Duties of good estate management and good husbandry.**—The following provisions of this Part of this Act shall have effect for the purpose of securing

that owners of agricultural land fulfil their responsibilities to manage the land in accordance with the rules of good estate management, and that occupiers of agricultural land fulfil their responsibilities to farm the land in accordance with the rules of good husbandry. [9]

*General note.*—This section declares the aim of Part II of the Act as being to secure, first, that owners of agricultural land fulfil their responsibilities to manage the land in accordance with the rules of good estate management (see s. 10, *infra*), and secondly, that occupiers of such land fulfil their responsibilities to farm in accordance with the rules of good husbandry (see s. 11, *post*).

*Agricultural land.*—See s. 109 (1), *post*; as to the meaning of “agriculture,” see s. 109 (3), *post*.

*Occupiers.*—See s. 109 (5), *post*. There is a clear contrast between “owners” and “occupiers.” It has been said that the owner of vacant land is not the occupier (*Ironmongers' Co. v. Naylor* (1876), Poll. 207); for a consideration of the meaning of “occupation” for the purposes of income tax (Scheds. A and B), see *Thorley v. Payne*, [1943] K. B. 306, 310; [1943] 1 All E. R. 354, 359, 360.

### *Rules of Good Estate Management and Good Husbandry*

**10. Good estate management.**—(1) For the purposes of this Act, an owner of agricultural land shall be deemed to fulfil his responsibilities to manage it in accordance with the rules of good estate management in so far as his management of the land and (so far as it affects the management of that land) of other land managed by him is such as to be reasonably adequate, having regard to the character and situation of the land and other relevant circumstances, to enable an occupier of the land reasonably skilled in husbandry to maintain efficient production as respects both the kind of produce and the quality and quantity thereof. [10]

(2) In determining whether the management of land is such as aforesaid, regard shall be had, but without prejudice to the generality of the provisions of the last foregoing subsection, to the extent to which the owner is providing, improving, maintaining and repairing fixed equipment on the land in so far as is necessary to enable an occupier of the land reasonably skilled in husbandry to maintain efficient production as aforesaid. [11]

(3) The responsibilities under the rules of good estate management of an owner of land in the occupation of another person shall not in relation to the maintenance and repair of fixed equipment include an obligation to do anything which that other person is under an obligation to do by virtue of any agreement. [12]

*General note.*—This section specifies the standard of management to be attained and kept to if consequences of non-compliance, such as the making of supervision orders, are to be avoided.

The test is a standard reasonably adequate, having regard to the character and situation of the land and to all other circumstances affecting management other than the personal circumstances of the owner, to enable a reasonably skilled farmer to maintain efficient production both in kind of produce and in the quality and quantity thereof; obligations in relation to the maintenance or repair of fixed equipment incumbent on an occupier, not the owner, under agreement are excluded.

The Agricultural Holdings Act, 1923 (1 Halsbury's Statutes 80), did not lay down any standard of good estate management, nor did the Defence (General) Regulations, 1939, regulation 62 (39 Halsbury's Statutes 1033). Good management before the present Act might have been defined as “getting as much as your property is worth” (*Brown v. Mitchell*, [1910] S. C. 369).

Whether or not the responsibilities contemplated by this section are fulfilled is a question for the Minister, who may delegate his functions to the County Agricultural Executive Committees (ss. 72 and 109 (3), *post*).

*Other land.*—This refers to land the management of which affects the agricultural land first referred to, e.g., land draining into agricultural land.

*Relevant circumstances.*—See s. 109 (3), *post*; as to want of capital the Minister stated in Standing Committee that if a person had not got or could not get appropriate credits that was one of the things that should be taken into account (H. of C. Official Report, S.C.A., February 20, 1947, col. 149). The definition of “relevant circumstances” was added at the Report Stage, when the Minister said that the object was to make it clear that all relevant circumstances relating to farming or estate management should be taken into consideration. “It was suggested [in Committee] that financial disability might be due to extraneous circumstances unconnected with the land . . . this amendment interprets the words ‘all relevant circumstances’ to mean matters affecting the farming or management of land and not the personal circumstances of the owner or occupier concerned” (438 H. of C. Official Report 557).

*Sanctions.*—As to the result of failure to observe the rules of good estate management, see the Preliminary Note, *ante*. Detailed consideration of ss. 12–21, in which this is set out, is beyond the scope of this volume.

*Definitions.*—For definition of “agricultural land,” see s. 109 (1), *post*, and for those of “fixed equipment,” “produce” and “relevant circumstances,” see s. 109 (3), *post*; as to “occupier,” see s. 109 (5), *post*.

**11. Good husbandry.**—(1) For the purposes of this Act, the occupier of an agricultural unit shall be deemed to fulfil his responsibilities to farm it in accordance with the rules of good husbandry in so far as the extent to which and the manner in which the unit is being farmed (as respects both the kind of operations carried out and the way in which they are carried out) is such that, having regard to the character and situation of the unit, the standard of management thereof by the owner and other relevant circumstances, the occupier is maintaining a reasonable standard of efficient production, as respects both the kind of produce and the quality and quantity thereof, while keeping the unit in a condition to enable such a standard to be maintained in the future. [13]

(2) In determining whether the manner in which a unit is being farmed is such as aforesaid, regard shall be had, but without prejudice to the generality of the provisions of the last foregoing subsection, to the extent to which—

- (a) permanent pasture is being properly mown or grazed and maintained in a good state of cultivation and fertility and in good condition;
- (b) the manner in which arable land is being cropped is such as to maintain that land clean and in a good state of cultivation and fertility and in good condition;
- (c) the unit is properly stocked where the system of farming practised requires the keeping of livestock, and an efficient standard of management of livestock is maintained where livestock are kept and of breeding where the breeding of livestock is carried out;
- (d) the necessary steps are being taken to secure and maintain crops and livestock free from disease and from infestation by insects and other pests;
- (e) the necessary steps are being taken for the protection and preservation of crops harvested or lifted, or in course of being harvested or lifted;
- (f) the necessary work of maintenance and repair is being carried out.

[14]

(3) The responsibilities under the rules of good husbandry of an occupier of an agricultural unit which is not owned by him shall not include an obligation to carry out any work of maintenance or repair which the owner of the unit or any part thereof is under an obligation to carry out in order to fulfil his responsibilities to manage in accordance with the rules of good estate management. [15]

*General note.*—This section specifies the standard of management that is to be attained and kept to if the consequences of non-compliance, such as the making of supervision orders, are to be avoided.

The definition of the standard of good husbandry supersedes that in the Agricultural Holdings Act, 1923, s. 57 (1), which is repealed (s. 110 and Sched. XIII, *post*). The test is that the land should be so farmed that having regard to the character and situation of the unit, to the standard of management thereof by the owner and all other circumstances affecting farming other than the personal circumstances of the occupier, the occupier is maintaining a reasonable standard of efficient production as regards both the kind of produce and the quality and quantity thereof; and that the unit is kept in a condition to enable the standard to be maintained: obligations incumbent on the owner in relation to maintenance or repair under s. 10, *ante*, are excluded. Whether or not the responsibilities contemplated by this section are fulfilled is a question for the Minister, who may delegate his functions to the County Agricultural Executive Committees (ss. 72 and 109 (3), *post*).

*Sanctions.*—As to the result of failure to observe the rules of good husbandry, see the Preliminary Note, *ante*. Detailed discussion of ss. 12–21, in which this is set out, is beyond the scope of this volume.

*Definitions.*—For definition of "agricultural unit," see s. 109 (2), *post*, and for those of "fixed equipment," "produce" and "relevant circumstances," see s. 109 (3), *post*. As to "farming" and "occupier," see s. 109 (5), *post*.

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## PART V

### ADMINISTRATIVE AND GENERAL

\* \* \* \* \*

#### *County Agricultural Executive Committees*

**71. Establishment and functions of County Agricultural Executive Committees.**—(1) For each administrative county, except the County of London, the Minister shall establish a County Agricultural Executive Committee which shall be charged, in relation to the county for which the Committee are established, with the duty of promoting agricultural development and efficiency by such means as the Minister may direct and of exercising such functions as the Minister may delegate to the Committee under the next following section. [16]

(2) The Minister may by order direct that any two or more administrative counties shall be treated for the purposes of this section and the Schedules therein referred to as if those counties taken together were a single administrative county; and the provisions of the Tenth Schedule to this Act shall have effect in relation to any order under this subsection. [17]

(3) A County Agricultural Executive Committee may with the approval of the Minister, and shall if the Minister so requires, appoint one or more sub-committees, and the County Agricultural Executive Committee shall refer to a sub-committee for report and recommendation such matters as may be determined by the Committee with the approval of the Minister or as may be required by the Minister, and shall delegate to a sub-committee such of the functions of the Committee, to such extent and subject to such conditions or restrictions, as may be so determined or required. [18]

(4) A County Agricultural Executive Committee may with the approval of the Minister, and shall if the Minister so requires, appoint one or more district committees for such part or parts of the county as may be determined by the County Agricultural Executive Committee with the approval of the Minister or as may be required by the Minister, and the County Agricultural Executive Committee shall refer to a district committee for report and recommendation such matters relating to the part of the county for which the district committee are appointed as may be so determined or required. [19]

(5) In the exercise of their functions a County Agricultural Executive Committee shall comply with any directions given by the Minister, and a sub-committee or district committee shall comply with any directions given by the Minister or by the County Agricultural Executive Committee by which the sub-committee or district committee were established. [20]

(6) The provisions in that behalf of the Ninth Schedule to this Act shall have effect as to the constitution of County Agricultural Committees, sub-committees and district committees and otherwise in relation thereto. [21]

(7) Without prejudice to the provisions of the next following section, the functions under any enactment of any War Agricultural Executive Committee therein referred to shall in such cases as may be prescribed be transferred to the Minister. [22]

(8) For the purposes of this section and of the Schedules therein referred to—

(a) a county borough which is surrounded by a single administrative county shall be treated as if it were included in that county,

- (b) any other county borough shall be treated as if it were included in such adjoining administrative county as the Minister may direct, or, if the Minister so directs, as if it were included partly in one such county and partly in another,
- (c) the county of London shall be treated as if any such part thereof as the Minister may direct were included in such adjoining administrative county as he may direct, and
- (d) the Isles of Scilly shall be treated as if those Isles were an administrative county. [23]

*Effect of section.*—There is to be established for each administrative county, except the County of London, a County Agricultural Executive Committee (s. 71 (1)), consisting of not more than five members (one of whom is to be a member of the county council) directly appointed by the Minister, and of seven further members (called "nominated members") appointed by the Minister from panels of persons nominated by representatives of the interests of farmers (three members), of farmworkers (two members) and of landowners (two members) (Sched. IX, para. 7, *post*).

These Committees, which replace on a permanent basis the War Agricultural Executive Committees, are charged with the duty of promoting agricultural development and efficiency and of exercising any functions of the Minister which are delegated to them by regulations made in pursuance of s. 72, *infra*. The intention is that they shall act as the agents of the Minister in carrying out the policy of the Act (see 149 H. of L. Official Report 119), and in the exercise of their functions they will act subject to general directions from the Minister. Provision is made for the appointment by the Committees of sub-committees and district committees, who will also be subject to directions from the Minister.

*Administrative county.*—Exclusive of London, there are sixty-nine administrative counties in England and Wales, the names of which are set out in the Local Government Act, 1933, Sched. I, Part I (21 Halsbury's Statutes 470). Note the provisions of sub-s. (2), *supra*, and Sched. X, *post*, for treating two or more administrative counties as one for the purposes of this section, thus having only one County Agricultural Executive Committee for the combined counties: this provision is intended to meet the case of small counties where it might be uneconomic to have individual Committees. Before making an order for the combination of counties for this purpose the Minister must consult representatives of interests of farmers, farm workers, and landowners, and the county councils concerned, and any order is to be subject to annulment by resolution of either House of Parliament (Sched. X, paras. 1 and 2, *post*).

As to county boroughs and the Isles of Scilly, see sub-s. (8), *supra*.

*County of London.*—Note the provisions of sub-s. (8) (c), *supra*, as to the inclusion of parts of the County of London in adjoining counties. Obviously the County of London contains insufficient agricultural land to justify the establishment of a separate Committee.

*The Minister.*—The Minister of Agriculture and Fisheries.

*Membership of the Committees.*—The Minister, who is empowered to make a maximum of five direct appointments to each Committee, stated on the Second Reading that this provision would enable the appointment of men of special qualifications and knowledge. One direct appointment is to be of a member of the county council concerned, the intention being to provide a link between the work of the Committee and of the county council in such matters as agricultural education and the administration of smallholdings. The nominated members will be drawn from panels of persons nominated by the National Farmers Union, the Central Landowners' Association and the farm workers' unions. Under para. 7 (4) of Sched. IX, the Minister may by order (which requires an affirmative resolution of Parliament) modify the number of members of the Committees or add to the classes of nominated members. As to the subject-matter of this note, see, generally, 432 H. of C. Official Report 641.

*Functions.*—This term includes powers and duties (s. 109 (3), *post*).

*Sub-committees.*—The Minister gave an assurance on the Report Stage that there would be an estate management sub-committee of every Committee (see 438 H. of C. Official Report 503). A Committee may add to a sub-committee persons who are not members of the Committee (Sched. IX, para. 10, *post*).

*District Committees.*—The number of members of district committees is to be determined by the Committees. They are appointed by the Committees, of which they need not necessarily be members (Sched. IX, para. 11, *post*).

*War Agricultural Executive Committees.*—These Committees were authorised to be appointed by the Minister for the administrative counties of England and Wales in pursuance of the Cultivation of Lands Order, 1939 (S. R. & O., 1939, No. 1078), and wide emergency powers as to the taking possession of land, entering upon and inspection of land, control of cultivation, termination of agricultural tenancies and the requisitioning of chattels used in connection with land could be delegated to them by the Minister. Under the Cultivation of Lands (County Boroughs) Order, 1939 (S. R. & O., 1939, No. 1079), War Agricultural Executive Committees were expressly authorised, after consultation with the council of any county borough which was wholly or partly surrounded by the county, to exercise their powers within that county borough. These Committees are now placed on a permanent basis as County Agricultural Executive Committees.

**72. Delegation of functions of Minister to County Agricultural Executive Committees.**—The Minister may make regulations providing for delegating to a County Agricultural Executive Committee, to such extent and subject

to such conditions or restrictions as may be specified by or under the regulations, such of his functions—

(a) under this Act ;

(b) under any other enactment (whether passed before or after the passing of this Act), being functions relating to agriculture,

as may be so specified. [24]

*The Minister.*—The Minister of Agriculture and Fisheries.

*Regulations.*—As to regulations generally, see s. 108, *post*. No regulations had been made under this section up to the time of going to press.

*County Agricultural Executive Committee.*—See s. 71, *ante*.

*Functions.*—This term includes powers and duties (s. 109 (3), *post*).

*Delegation.*—As to delegation of the emergency powers of the Minister under Defence Regulations to War Agricultural Executive Committees, see the Cultivation of Lands Order, 1939 (S. R. & O., 1939, No. 1078), and note to s. 71, *ante*.

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### *Supplementary Administrative Provisions*

#### **75. Provisions as to land lying partly in one area and partly in another.—**

Where any land lies partly in the area of the Welsh Agricultural Land Sub-Commission and partly outside that area, or partly in the area of one County Agricultural Executive Committee and partly in the area of another, or partly in the area of one Agricultural Land Tribunal and partly in the area of another, the Minister may direct that for the purposes of anything required or authorised to be done by or before the Sub-Commission or the Agricultural Land Commission, or by or before such a committee or tribunal, as the case may be, in relation to that land the whole of the land shall be deemed to be comprised in the area comprising such part of the land as may be specified in the direction. [25]

*Effect of section.*—The Minister may direct that as regards, *inter alia*, County Agricultural Executive Committees land which lies partly in one area and partly in another is to be deemed to be wholly in one or the other of those areas.

*County Agricultural Executive Committee.*—See s. 71, *ante*.

*The Minister.*—The Minister of Agriculture and Fisheries.

**76. Dissolution of Councils of Agriculture, the Agricultural Advisory Committee and county agricultural committees established under 9 & 10 Geo. 5, c. 91.**—(1) The Councils of Agriculture and the Agricultural Advisory Committee established under Part II of the Ministry of Agriculture and Fisheries Act, 1919, and the agricultural committees established under Part III of that Act, are hereby dissolved. [26]

(2) In paragraph (6) of the Schedule to the Corn Production Acts (Repeal) Act, 1921 (which empowers the Minister to delegate his functions under that Schedule to the agricultural committee of a county or borough) for the words “the Agricultural Committee of” there shall be substituted the words “the Council”. [27]

(3) In subsection (2) of section fifteen of the Agriculture Act, 1937 (which provides for the payment of grants for land drainage expenses to the councils of county boroughs, except a county borough which has not established an agricultural committee) the words from “and except the council” to the end of the subsection shall cease to have effect. [28]

*Ministry of Agriculture and Fisheries Act, 1919.*—3 Halsbury's Statutes 451. Part II of this Act provided for the establishment of Councils of Agriculture for England and Wales which were to meet twice a year for discussion of matters of public interest relating to agriculture and other rural industries, and also for the establishment of an Agricultural Advisory Committee for England and Wales to advise and make recommendations to the Minister on agriculture and other rural industries. Part III provided for the establishment of county agricultural committees to act for councils on agricultural matters, the establishment of these committees being compulsory in the case of counties (other than the County of London) and optional in the case of county boroughs and the County of London. All these bodies are now dissolved by sub-s. (1) of the present section and Parts II and III of the Act of 1919 are repealed by s. 110 and Sched. XIII, *post*.

Speaking of this dissolution, in Committee, the Minister said (H. of C. Official Report, S.C.A., March 26, 1947, cols. 744, 745):



"I am sure that hon. Members in all parts of the Committee will appreciate that once the county agricultural executive committees are made permanent they will take over almost all the functions hitherto performed . . . by the old county council agricultural committees. The only things that will remain to the county council or county borough will be education, smallholdings and drainage. I think the answer to my hon. Friend is that these particular services will be far better dealt with by special committees of the county councils than by a county agricultural committee such as the one we had pre-war and which still exists.

"It is true that the loss of the old committees carries with it the Councils of Agriculture for Wales and for England because a very large proportion of the old Councils was drawn from the county agricultural committees. As the first go out of existence, then the Councils of Agriculture automatically go with them. It seems clear that in the new circumstances there is no further necessity for the old county agricultural committee as such, nor for the Councils of Agriculture for England or Wales. We shall have at our disposal the county agricultural executive committee, the new National Agricultural Advisory Service, the agricultural improvement council, the agricultural research council and the technical development committees working a two-way traffic of scientific advice on the day to day problems of the farm."

*Corn Production Acts (Repeal) Act, 1921.*—The Schedule to this Act (1 Halsbury's Statutes 79) deals with functions of the Minister of Agriculture and Fisheries in regard to the destruction of injurious weeds. Para. (6), which provides for the delegation by the Minister of these functions to the agricultural committees of counties, is amended consequentially on the dissolution of agricultural committees under sub-s. (1), *supra*, to provide for delegation to the councils of any counties.

The injurious weeds to which the Schedule applies are specified in para. (8) thereof, and the Minister is empowered by s. 102, *post*, to make regulations adding to the injurious weeds specified in that paragraph.

*Agriculture Act, 1937.*—S. 15 (1) of this Act (30 Halsbury's Statutes 799) authorises the payment of Exchequer grants to certain drainage authorities, specified in sub-s. (2) of that section, as being "all drainage authorities as defined by section eighty-one of the Land Drainage Act, 1930, except catchment boards, and except the council of any county borough which has not established an agricultural committee constituted in accordance with a scheme approved by the Minister." The words in italics are now repealed as a consequence of the dissolution of county agricultural committees under sub-s. (1), *supra*.

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### *Provisions as to Compulsory Acquisition of Land*

**92. Procedure for compulsory purchase of land.**—(1) Subject to the provisions of this section, where under any provision of this Act power is conferred on the Minister or a smallholdings authority to purchase land compulsorily, the power shall be exercisable for the purchase of any particular land on the Minister or the authority, as the case may be, being authorised so to purchase the land in accordance with the provisions of the Acquisition of Land (Authorisation Procedure) Act, 1946, and that Act shall apply accordingly—

- (a) as if paragraph (b) of subsection (1) of section one thereof (which refers to the compulsory purchase of land by the Minister of Transport under certain enactments) included a reference to any compulsory purchase of land by the Minister under this Act, and
- (b) as if this Act had been in force immediately before the commencement of the said Act of 1946 :

Provided that section two of that Act (which confers temporary powers for speedy acquisition of land in urgent cases) shall not apply to any compulsory purchase of land under this Act. [29]

(2) Where under any provision of this Act power is conferred on the Minister to purchase any particular land compulsorily on the giving of a certificate by him, the certificate shall have effect as if it were a compulsory purchase order made under section one of the said Act of 1946, and—

- (a) where the certificate relates to land falling within subsection (2) of the said section one (which applies, to purchases of local authorities' and statutory undertakers' land, commons, open spaces and inalienable National Trust land, and ancient monuments and other objects of archaeological interest, the special procedure set out in Part III of the First Schedule to that Act) the certificate shall be embodied in an order of the Minister and the said Part III shall apply accordingly ;

- (b) subsection (3) of the said section one and the Second Schedule to the said Act of 1946 (which provide for incorporation of the Lands Clauses Acts and other enactments) shall have effect in relation to the purchase, and anything which under that Schedule may be provided by a compulsory purchase order may be provided by the said certificate ;
- (c) in the application to the certificate of Part IV of the First Schedule to the said Act of 1946 (which relates to the validity and coming into operation of compulsory purchase orders) for references to the first publication of notice of the making of an order there shall be substituted references to the service of notice of the giving of the certificate, and for references to the requirements of the said First Schedule and of regulations made thereunder there shall be substituted references to the requirements of this Act as to the proceedings to be taken before the giving of the certificate. [30]
- (3) In relation to a compulsory purchase under section eighty-seven of this Act the said Act of 1946 shall have effect subject to the following modifications :—

- (a) head (a) of sub-paragraph (1) of paragraph 3 of the First Schedule (which provides for advertisement in local newspapers) shall not apply ;
- (b) the Minister may disregard any objection to the compulsory purchase order if he is satisfied that the objection is made on the ground that the purchase is unnecessary or inexpedient. [31]

*Effect of section.*—The procedure for compulsory purchase of land under the Act by the Minister or by a smallholdings authority (see title ALLOTMENTS AND SMALLHOLDINGS, *post*), is to be that laid down in the Acquisition of Land (Authorisation Procedure) Act, 1946, *infra*, except that the power of speedy acquisition in urgent cases provided by s. 2 of that Act is not applicable to a compulsory purchase under the present Act. Where the Minister is empowered to purchase land compulsorily on the giving of a certificate, such certificate is to have effect as if it were a compulsory purchase order made under s. 1 of the Act of 1946.

The section came into force on October 1, 1947 (Agriculture Act, 1947 (Commencement) Order, 1947 ; S. R. & O., 1947, No. 1767, *post*).

*The Minister.*—The Minister of Agriculture and Fisheries.

*Powers of compulsory purchase.*—Powers of compulsory purchase are conferred on the Minister, *inter alia*, for the provision of smallholdings under s. 56 (1). By s. 48 such powers are conferred on smallholdings authorities for the purpose of smallholdings (see, in each case, title ALLOTMENTS AND SMALLHOLDINGS, *post*).

*Smallholdings authority.*—See s. 47, title ALLOTMENTS AND SMALLHOLDINGS, *post*.

*Acquisition of Land (Authorisation Procedure) Act, 1946.*—39 Halsbury's Statutes 52. S. 1 (1) (b) of the Act provides that the authorisation of any compulsory purchase of land by the Minister of Transport under certain specified enactments is to be conferred by compulsory purchase order in accordance with the provisions of Sched. 1 to that Act, being provisions which, subject to certain adaptations, modifications and exceptions, correspond to the provisions as to authorisation of compulsory purchase of land in the Local Government Act, 1933 (26 Halsbury's Statutes 392 *et seq.*). The effect of sub-s. (1) (a) of the present section is to apply the same provisions to the compulsory purchase of land by the Minister of Agriculture and Fisheries under the present Act.

S. 1 (1) (a) of the Act of 1946 similarly applies the uniform procedure of that Act for authorising compulsory purchase to compulsory purchases by local authorities where the power so to purchase is conferred on those authorities by any provision of a public Act in force before the commencement of the Act of 1946 ; and the effect of sub-s. (1) (b) of the present section is to apply that uniform procedure to compulsory purchases by smallholdings authorities under the present Act.

*Speedy acquisition in urgent cases.*—S. 2 of the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Halsbury's Statutes 56), provides that for a temporary period authorisation of compulsory purchases of land by local authorities which could be given under s. 1 (1) of that Act or under the Town and Country Planning Act, 1944 (37 Halsbury's Statutes 420) may instead be given in writing where the confirming authority is satisfied that it is urgently necessary in the public interest for possession to be obtained without delay. A similar provision is made in respect of compulsory purchases by the Board of Trade under the Distribution of Industry Act, 1945 (38 Halsbury's Statutes 479) and by the Minister of Transport under certain specified enactments.

The powers of the said s. 2 were primarily intended to be exercised in connection with housing, town planning and the distribution of industry, and have been generally excluded in the application of the Act of 1946 to compulsory purchases under subsequent enactments.

*Compensation for acquisition.*—Compensation on a compulsory acquisition to which this section applies is payable in accordance with the ordinary law applicable to such acquisition by public authorities, now modified by Part V of the Town and Country Planning Act, 1947 ; see title LAND, ACQUISITION, SALE, ETC., OF, *post*.



*Sub-s. (2).*—This sub-section relates to compulsory purchases by the Minister in cases where certificates are given by him under s. 16 (dispossession on grounds of bad estate management), s. 85 (retention of land in the possession of the Minister in the interests of agricultural production), and s. 86 (control of sub-division of agricultural units), which are outside the scope of this volume.

*Sub-s. (3).*—This sub-section relates to compulsory purchases under s. 87 (experimental schemes for readjustment of farm boundaries), which are similarly outside the scope of this volume.

**93. Compulsory hiring of land.**—(1) The Minister may with the approval of the Treasury make regulations for giving effect to the provisions of this Act as to the compulsory hiring of land, and regulations under this section may provide—

- (a) for prescribing the procedure for the compulsory hiring of land under this Act, being such procedure as appears to the Minister to correspond as nearly as may be with the procedure for the compulsory purchase of land under this Act ;
- (b) for applying to the compulsory hiring of land, with such adaptations, exceptions or modifications as appear to the Minister requisite, provisions of the Lands Clauses Acts, sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845, the Acquisition of Land (Assessment of Compensation) Act, 1919, the Acquisition of Land (Authorisation Procedure) Act, 1946, except section two of the last mentioned Act, and any other provision which had effect in relation to the compulsory hiring of land under any enactment repealed by this Act ;
- (c) for determining the terms and conditions of a compulsory hiring other than the rent ;
- (d) for requiring questions arising on the determination of a compulsory hiring to be determined by arbitration. [32]

(2) Regulations under this section may apply generally to all compulsory hirings under this Act or may make different provisions for different classes of such hirings. [33]

*Effect of section.*—This section and the following section deal with aspects of the compulsory hiring of land by smallholdings authorities under s. 48, and by the Minister, *inter alia*, under s. 56. Under the present section the procedure for such compulsory hiring, which is to be prescribed by the Minister in regulations made with Treasury approval, is to be based on the procedure laid down in s. 92, *ante*, for compulsory purchase by the authorities and by the Minister.

*The Minister.*—The Minister of Agriculture and Fisheries.

*Regulations.*—As to regulations generally, see s. 108, *post*. No regulations had been made under the present section up to the time of going to press.

*Lands Clauses Acts.*—As to these Acts, see 2 Halsbury's Statutes 1113 *et seq*.

*Railways Clauses Consolidation Act, 1845*, ss. 77–85.—14 Halsbury's Statutes 61–84.

*Acquisition of Land (Assessment of Compensation) Act, 1919.*—2 Halsbury's Statutes 1176.

*Acquisition of Land (Authorisation Procedure) Act, 1946.*—39 Halsbury's Statutes 52. S. 2 of this Act provides for speedy purchase of land in urgent cases ; see notes to s. 92, *ante*.

*Enactment repealed by this Act.*—For repeals, see s. 110 and Sched. XIII, *post* ; for those taking effect as from October 1, 1947, see the Agriculture Act, 1947 (Commencement) Order, 1947 (S. R. & O., 1947, No. 1767), *post*. The remaining repeals had not taken effect up to the date of going to press.

*Commencement.*—This section came into force on October 1, 1947 (see the Agriculture Act, 1947 (Commencement) Order, 1947 ; S. R. & O., 1947, No. 1767, *post*).

**94. Limitation of period of compulsory hiring.**—(1) Subject to the provisions of this section, no compulsory hiring of land under this Act shall be for a term longer than thirty-five years. [34]

(2) For the avoidance of doubt it is hereby declared that the fact that the Minister or smallholdings authority is in possession of land by virtue of a compulsory hiring thereof does not prevent the Minister or authority, as the case may be, purchasing the land compulsorily. [35]

(3) Where land has been compulsorily hired under this Act or any enactment thereby repealed and the person who but for the hiring would be entitled to possession of the land requires the land or part thereof for any purpose for which it appears to the Minister expedient that the said person

should resume possession thereof, the said person may with the consent of the Minister resume possession of the land or part thereof in question—

- (a) in the case of land hired by the Minister, within such period after the granting of the Minister's consent as the Minister may specify ;
- (b) in the case of land hired by a smallholdings authority, upon giving to the authority twelve months' previous notice in writing of his intention so to do or such shorter notice as may have been specified for the purposes of this subsection in the order authorising the compulsory hiring of the land ;

and if possession is resumed by the said person of part only of the land, the rent payable as from the date of resumption in respect of the hiring of the remainder of the land shall be reduced in such proportion as in default of agreement may be determined in the like manner as under the last foregoing section rent is determined for the compulsory hiring of land under this Act.

### [36]

*Effect of section.*—No compulsory hiring, either by the Minister or by smallholdings authorities, is to be for a longer period than thirty-five years, and provision is made for the owner, etc., to resume possession with the Minister's consent before the expiration of the term, though in the case of land hired to a smallholdings authority a maximum of twelve months' notice of intention to resume possession is required (s. 94 (1), (3)). The Minister or a smallholdings authority may compulsorily purchase land hired to them (s. 94 (2)).

*The Minister.*—The Minister of Agriculture and Fisheries.

*Smallholdings authority.*—See s. 47, title ALLOTMENTS AND SMALLHOLDINGS, *post*. The powers of such authorities to hire land compulsorily are conferred by s. 48.

*Purchasing.*—For compulsory purchase procedure, see s. 92, *ante*.

*Any enactment thereby repealed.*—For repeals, see s. 110 and Sched. XIII, *post* : for those taking effect as from October 1, 1947, see the Agriculture Act, 1947 (Commencement) Order, 1947 (S. R. & O., 1947, No. 1767), *post*. The remaining repeals had not taken effect up to the date of going to press.

*Determined in like manner.*—This refers to determination by regulations under s. 93 (1) (b), *ante*.

*Commencement.*—This section came into force on October 1, 1947 (see the Agriculture Act, 1947 (Commencement) Order, 1947 ; S. R. & O., 1947, No. 1767, *post*).

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### *Pest and Weed Control*

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**102. Destruction of injurious weeds.**—The Schedule to the Corn Production Acts (Repeal) Act, 1921 (which contains provisions for securing the destruction of injurious weeds specified in paragraph (8) thereof) shall have effect, in its application to England and Wales, as if there were specified in the said paragraph (8) such additional injurious weeds as the Minister may by regulations under this section prescribe, and such regulations may make different provisions in different cases specified in the regulations. [37]

*General note.*—The Corn Production Acts, 1917 and 1920, were repealed as from October 1, 1921, by the Corn Production Acts (Repeal) Act, 1921 (1 Halsbury's Statutes 77), but the provisions of the repealed Acts relating to the destruction of injurious weeds were continued in force as set out in the Schedule to the Act of 1921 (1 Halsbury's Statutes 79). These provisions empower the Minister to serve notice upon occupiers of land requiring the destruction of injurious weeds thereon, with penalties in default. In addition, the Minister may arrange for the destruction of the weeds and recover the cost of such destruction from the occupiers. The Minister could formerly delegate his powers under the Schedule to agricultural committees, but with the dissolution of those committees such delegation is now to county councils (see s. 76 (1), (2), *ante*).

The injurious weeds to which the Schedule applies are specified in para. (8) thereof, and are as follows : Spear Thistle (*Carduus lanceolatus* L.), Creeping or Field Thistle (*Carduus Arvensis* Curt.), Curled Dock (*Rumex crispus* L.), Broadleaved Dock (*Rumex obtusifolius* L.) and Ragwort (*Senecio Jacobaea* L.). The present section empowers the Minister by regulations to add further injurious weeds to the Schedule.

*Common law position as to destruction of injurious weeds.*—At common law an occupier of land is under no duty to an adjoining occupier to cut thistles naturally growing on his land, so as to prevent their seeding on the adjoining land (*Giles v. Walker* (1890), 24 Q. B. D. 656).

*The Minister.*—The Minister of Agriculture and Fisheries.

*Regulations.*—As to regulations generally, see s. 108, *post*. No regulations had been made under this section up to the time of going to press.

*Commencement.*—This section came into force on October 1, 1947 (see the Agriculture Act, 1947 (Commencement) Order, 1947 ; S. R. & O., 1947, No. 1767, *post*).

### Supplementary

**103. Schemes for provision of agricultural goods and services.**—(1) For the purpose of promoting efficiency in agriculture or facilitating food production the Minister may with the approval of the Treasury make schemes for providing goods and services to persons managing or farming agricultural land.

Any scheme under this section shall be embodied in an order which shall be laid before Parliament forthwith after being made. [38]

(2) A scheme under this section shall not authorise the provision of goods after the expiration of five years from the coming into operation of this section or such longer period as may be prescribed. [39]

(3) The Minister may make such reasonable charges, if any, as he thinks fit in respect of goods and services provided in pursuance of a scheme under this section. [40]

(4) The Minister may acquire by agreement any land which he requires for the purposes of a scheme under this section. [41]

(5) This section shall extend to Scotland, with the substitution for references to the Minister of references to the Secretary of State. [42]

*General note.*—For the purposes of promoting agricultural efficiency and for increasing food production, the Minister is empowered to make schemes, with Treasury approval, for providing agricultural goods and services to farmers, either free or on payment of reasonable charges. Whilst the provision of goods is limited to a period of five years from October 1, 1947 (see the Agriculture Act, 1947 (Commencement) Order, 1947; S. R. & O., 1947, No. 1767, *post*), or to such further period as may be prescribed by regulations, no limit is placed upon the period for which services may be provided. Any land needed in connection with such schemes may be acquired by agreement.

Under s. 25 of the Agriculture (Miscellaneous War Provisions) Act, 1940 (33 Halsbury's Statutes 20), authority was given for the payment out of public funds of any expenses of the Minister in connection with arrangements made by him, with Treasury approval, for providing agricultural goods and services for the purpose of increasing food production. That Act expired on December 31, 1947 (see the Emergency Laws (Transitional Provisions) Act, 1946, s. 3; 39 Halsbury's Statutes 882), and the said s. 25 is now replaced by the present section.

In the past agricultural goods and services have been provided by the War Agricultural Executive Committees, and it was stated in the Financial Memorandum accompanying the Agriculture Bill that the combined total of goods and services has been running at the rate of £14,000,000 a year, with bad debts accounting for £1 in every £3,000 lent, but that it was expected that this total would decline.

*The Minister.*—The Minister of Agriculture and Fisheries.

*Goods and services.*—According to para. 110 of the Explanatory Memorandum on the Agriculture Bill (Cmd. 6996), the chief intention of the present section is that County Agricultural Executive Committees should continue to be able to make available contract services, such as machinery services and labour gangs, for the benefit, in particular, of small farmers.

*Order.*—No schemes had been made under this section up to the time of going to press.

*Charges.*—These are in the discretion of the Minister.

*Definition.*—For definition of "agriculture," see s. 109 (3), *post*, and for that of "agricultural land," see s. 109 (1), *post*. "Prescribed" means prescribed by regulations made by the Minister (see s. 108 (2), 109 (3), *post*).

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**108. Regulations and orders.**—(1) Any regulations made by the Minister under this Act, and any Order made by the Minister under section seventy-three thereof, shall be laid before Parliament forthwith after being made, and if either House of Parliament, within the period of forty days beginning with the day on which the regulations or order are or is laid before it, resolves that an Address be presented to His Majesty praying that the regulations or order be annulled, no further proceedings shall be taken thereunder after the date of the resolution, and His Majesty may by Order in Council revoke the regulations or order so, however, that any such resolution and revocation shall be without prejudice to the validity of anything previously done under the regulations or order or to the making of new regulations or a new order.

In reckoning any such period of forty days as aforesaid, no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days. [48]

(2) In this Act the expression "prescribed" means prescribed by regulations made by the Minister. [44]

(3) Any power conferred by this Act to make an order shall include a power, exercisable in the like manner and subject to the like conditions, to revoke or vary the order. [45]

*General note.*—By this section the so-called "negative resolution procedure" is applied to all regulations of the Minister under the Act and to orders under s. 73 thereof. In the circumstances of the present section this means that such documents are valid and binding as soon as they are made and will continue to be so unless and until, within forty days (as defined in the section) of their being laid before Parliament, a resolution of either House is passed praying that they be annulled. This negative procedure should be carefully distinguished from the so-called "affirmative resolution procedure" under which documents affected are of no effect until brought into operation by parliamentary resolution.

*Orders under s. 73.*—This section relates to the establishment, constitution and procedure of Agricultural Land Tribunals, and is outside the scope of this volume.

*Effect of the Statutory Instruments Act, 1946* (39 Halsbury's Statutes 783).—This Act came into full operation on January 1, 1948 (see S.I. 1948 No. 3).

The effect of the Act is that documents made after its commencement in exercise of certain statutory powers conferred by Acts passed before its commencement (such as the present Act) will be "statutory instruments"; accordingly such documents require to be laid before Parliament in accordance with the provisions of s. 4 of that Act in substitution for the corresponding provisions of the present section, and the provisions of s. 5 of that Act for annulment in pursuance of resolution of either House of Parliament are substituted for the corresponding provisions of this section. Only such documents, however, as are made in exercise of certain statutory powers are to be "statutory instruments," the powers being identified by reference to the Rules Publication Act, 1893 (18 Halsbury's Statutes 1016), and the powers conferred on a "rule-making authority" to make "statutory rules," both of which terms are defined in the Rules Publication Act, 1893, s. 4 (18 Halsbury's Statutes 1018). A statutory rule means a "rule, regulation or byelaw made under any Act," and the term includes the regulations referred to in the present section.

**109. Interpretation.**—(1) In this Act the expression "agricultural land" means land used for agriculture which is so used for the purposes of a trade or business, or which is designated by the Minister for the purposes of this subsection, and includes any land so designated as land which in the opinion of the Minister ought to be brought into use for agriculture:

Provided that no designation under this subsection shall extend—

(a) to land used as pleasure grounds, private gardens or allotment gardens, or

(b) to land kept or preserved mainly or exclusively for the purposes of sport or recreation, except where the Minister is satisfied that its use for agriculture would not be inconsistent with its use for the said purposes and it is so stated in the designation. [46]

(2) In this Act the expression "agricultural unit" means land which is occupied as a unit for agricultural purposes, including—

(a) any dwelling-house or other building occupied by the same person for the purpose of farming the land, and

(b) any other land falling within the definition in this Act of the expression "agricultural land" which is in the occupation of the same person, being land as to which the Minister is satisfied that having regard to the character and situation thereof and other relevant circumstances it ought in the interests of full and efficient production to be farmed in conjunction with the agricultural unit, and directs accordingly:

Provided that the Minister shall not give a direction under this subsection as respects any land unless it is for the time being not in use for any purpose which appears to him to be substantial having regard to the use to which it might be put for agriculture. [47]

(3) In this Act the following expressions have the meanings hereby respectively assigned to them, that is to say:—

"agriculture" includes horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, the use of land as

grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly ;

"allotment garden" means an allotment not exceeding forty poles in extent which is wholly or mainly cultivated by the occupier for the production of vegetables or fruit for consumption by himself or his family ;

"fixed equipment" includes any building or structure affixed to land and any works on, in, over or under land, and also includes anything grown on land for a purpose other than use after severance from the land, consumption of the thing grown or of produce thereof, or amenity, and references to fixed equipment on land shall be construed accordingly ;

"functions" includes powers and duties ;

"livestock" includes any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land ;

"pasture" includes meadow ;

"prescribed" has the meaning assigned to it by the last foregoing section ;

"produce" includes anything (whether live or dead) produced in the course of agriculture ;

"relevant circumstances", in relation to an owner or occupier, includes all circumstances affecting management or farming other than the personal circumstances of the owner or occupier. [48]

(4) References in this Act to any enactment shall be construed, except where the context otherwise requires, as references to that enactment as amended by or under any other enactment, including this Act. [49]

(5) References in this Act to the farming of land include references to the carrying on in relation to the land of any agricultural activity ; and in relation to any agricultural activity the person having the right to carry it on shall be deemed to be the occupier of the land. [50]

(6) References in this Act to the use of land for agriculture include, in relation to land forming part of an agricultural unit, references to any use of the land in connection with the farming of the unit. [51]

**110. Repeals.**—The enactments specified in the Thirteenth Schedule to this Act are, save as provided in Part III of this Act, hereby repealed to the extent specified in the third column of that Schedule. [52]

*Part III of this Act.*—This Part of the Act, which deals with agricultural holdings in general, is outside the scope of this volume.

**111. Short title, commencement and extent.**—(1) This Act may be cited as the Agriculture Act, 1947. [53]

(2) This Act shall come into operation on such date as His Majesty may by Order in Council appoint ; and an Order under this subsection may appoint different dates in relation to different provisions of this Act. [54]

(3) This Act, except in so far as is expressly provided therein, shall not extend to Scotland or Northern Ireland. [55]

*Dates of operation.*—The Act is to come into operation on a date or dates to be appointed by Order in Council.

Up to the time of going to press only the provisions referred to in the Agriculture Act, 1947 (Commencement) Order, 1947 (S. R. & O., 1947, No. 1767), *post*, have been brought into operation : with one exception, these provisions came into force on October 1, 1947.

## SCHEDULES

\* \* \* \* \*

Sections 68, 71, 73

## NINTH SCHEDULE

CONSTITUTION ETC. OF COMMISSION, SUB-COMMISSION, COMMITTEES  
AND TRIBUNALS

\* \* \* \* \*

*County Agricultural Executive Committees, Sub-Committees and District  
Committees*

7.—(1) A County Agricultural Executive Committee shall consist of not more than five members appointed by the Minister, and of seven other members (hereinafter referred to as "nominated members") appointed by the Minister from among persons nominated in accordance with the following provisions of this Schedule.

(2) One of the said five members shall be a member of the council of the county for which the Committee is established, and shall be appointed by the Minister after consultation with that council.

In the application of this sub-paragraph—

- (a) to the Isles of Scilly for the references to the council of a county there shall be substituted references to the council of those Isles,
- (b) to a combination of counties which under subsection (2) of section seventy-one of this Act is treated as a single county for the reference to a member of the council of the county there shall be substituted a reference to a member of one of the councils, and for the reference to consultation with the council of a county there shall be substituted a reference to consultation with all of the councils.

(3) The nominated members shall be appointed from persons nominated—

- (a) in the case of three members, by persons appearing to the Minister to represent the interests of farmers ;
- (b) in the case of two members, by persons appearing to him to represent the interests of workers employed in agriculture ;
- (c) in the case of two members, by persons appearing to him to represent the interests of owners of agricultural land.

(4) The Minister may by order direct that the foregoing provisions of this paragraph shall have effect subject to such modifications of the numbers therein specified, or such additions to the classes of nominated members and such consequential additions to the persons required to be consulted under paragraph 1 of the Tenth Schedule to this Act, as may be provided by the order.

(5) Any order under this paragraph shall be of no effect unless approved by resolution of each House of Parliament.

8. The Minister shall designate a member of each County Agricultural Executive Committee to act as chairman of the Committee and another member to act as deputy chairman in the absence of the chairman.

9.—(1) Subject to the provisions of this paragraph, the term of office of any member of a County Agricultural Executive Committee shall be three years, but a member who ceases to hold office shall, subject to the provisions of this Schedule as to nomination, be eligible for reappointment.

(2) The following provisions shall regulate the tenure of office of the first members of a County Agricultural Executive Committee other than the chairman :—

- (a) at the end of the first year from the establishment of the Committee one-third (or, if one-third is not an integral number, the nearest integral number not exceeding one-third) of the said members, to be chosen by the Committee, shall retire from the Committee ;
- (b) at the end of two years from the establishment of the Committee one-half (or, if one-half is not an integral number, the nearest integral number not exceeding one-half) of the remaining first members of the Committee, to be chosen by the Committee, shall retire from the Committee.



(3) Any member of the Committee may resign his membership by notice in writing served on the Minister.

(4) If the Minister is satisfied that any member of the Committee is incapacitated by infirmity of mind or body from discharging the duties of his office, or is otherwise unsuited to continue to discharge those duties, or if any member of the Committee is adjudged bankrupt or makes a composition or arrangement with his creditors, the Minister may revoke his appointment as a member of the Committee.

(5) Where the Minister appoints a person in the place of a member whose office is vacated otherwise than in accordance with sub-paragraph (1) or (2) of this paragraph, the said sub-paragraphs (1) and (2) shall apply to the person so appointed as if he had become a member of the Committee at the same time as the member in whose place he was appointed, or, where two or more persons are appointed as aforesaid in succession, as if he had become a member of the Committee at the same time as the first member whose office was vacated as aforesaid.

10. A County Agricultural Executive Committee may add to any sub-committee established by them persons not being members of the Committee, who shall continue as members of the sub-committee for such period as the Committee may determine.

11. A district committee shall consist of such number of members, whether or not members of the County Agricultural Executive Committee by which the district committee are established, as the County Agricultural Executive Committee may determine, and the members of a district committee shall be appointed by the County Agricultural Executive Committee and hold office for such period, determinable in such circumstances, as may be fixed by the County Agricultural Executive Committee.

12. A County Agricultural Executive Committee, sub-committee or district committee shall have power to fix and regulate their own procedure, including power to determine the number of members necessary to form a quorum.

\* \* \* \* \*

#### *Disqualifications for Appointment*

19.—(1) A person shall be disqualified for being appointed or being a member of the Commission or Sub-Commission or of a County Agricultural Executive Committee, sub-committee or district committee, or a member of or assessor to an Agricultural Land Tribunal, so long as he is a member of the Commons House of Parliament.

(2) A person shall be disqualified for being appointed or being a member of, or assessor to, an Agricultural Land Tribunal so long as he is a member of any other body mentioned in the last foregoing sub-paragraph.

#### *Validity of Acts*

20.—(1) Any body mentioned in the last foregoing paragraph shall have power to act notwithstanding any vacancy among its members.

(2) All acts done at any meeting of any such body shall, notwithstanding that it is afterwards discovered that there was a defect in the appointment or disqualification of a person purporting to be a member thereof, be as valid as if that defect had not existed.

(3) Nothing in sub-paragraph (1) of this paragraph shall affect any requirement as to the number of members necessary to constitute a meeting of any such body as aforesaid.

#### *Nomination of Persons for Appointment as Nominated Members*

21.—(1) Where for the purpose of appointing nominated members for any county or area provision is made under the foregoing paragraphs of this Schedule for nomination by persons appearing to the Minister to be representative of the interests of farmers, workers or owners of land or by any other persons specified by order of the Minister under sub-paragraph (4) of paragraph 7 or sub-paragraph (1) of paragraph 17 of this Schedule, the said persons shall, on a requirement in that behalf being made by the Minister, submit to the Minister such number of names for the county or area in question as the Minister may require.

(2) If in relation to any appointment of a nominated member it appears to

the Minister that any such persons have failed within a reasonable time to comply with any requirement under the last foregoing sub-paragraph, the Minister may notwithstanding anything in the foregoing provisions of this Schedule appoint as the nominated member in question such person as he thinks fit, being a person who appears to him to represent the interests of farmers, workers or owners, or being a person of such class as may be specified by such an order as aforesaid, as the case may be.

#### *Officers and Servants*

22.—(1) The Minister shall appoint a secretary and a chief technical officer to the Agricultural Land Commission and to the Welsh Agricultural Land Sub-Commission respectively, and the Commission and the Sub-Commission may appoint such other officers and servants as they may, with the approval of the Minister and the Treasury, determine; and the Minister may pay to the officers and servants of the Commission and the Sub-Commission such salaries, wages and allowances as he may with the approval of the Treasury determine.

(2) The Minister shall attach to County Agricultural Executive Committees and sub-committees thereof and to district committees and Agricultural Land Tribunals such officers and servants of the Ministry as he may with the approval of the Treasury determine to be required for providing the committees and tribunals with the necessary officers and servants.

(3) The Commission or the Sub-Commission may employ such agents as they consider desirable for the discharge of their functions, and may pay to agents employed by them such remuneration as they may, with the approval of the Minister and the Treasury, determine.

#### *Remuneration and Expenses*

23.—(1) The Minister may pay to members of the Commission, the Sub-Commission and Agricultural Land Tribunals such remuneration (whether by way of salaries or of fees) as he may with the approval of the Treasury determine.

(2) The Minister may pay to the members of any body mentioned in paragraph 19 of this Schedule and to the assessors to Agricultural Land Tribunals such allowances as he may with the approval of the Treasury determine.

(3) The expenses of any body mentioned in paragraph 19 of this Schedule shall be defrayed by the Minister.

#### *Proof of Instruments*

24. Any document purporting to be a document duly executed or issued under the seal of the Commission or on behalf of any such body as aforesaid shall, until the contrary is proved, be deemed to be a document so executed or issued, as the case may be. [56]

### TENTH SCHEDULE

Section 71

#### COMBINATION OF COUNTIES FOR PURPOSES OF AGRICULTURAL EXECUTIVE COMMITTEES

1. Before making an order under subsection (2) of section seventy-one of the Act the Minister shall consult with such persons as appear to him to represent the interests of farmers, workers employed in agriculture, and owners of agricultural land, and with the councils of the counties concerned.

2.—(1) Any order under the said subsection (2) shall be laid before Parliament forthwith after being made, and if either House of Parliament within a period of forty days beginning with the day on which any such order is laid before it resolves that an Address be presented to His Majesty praying that the order be annulled, no further proceedings shall be taken thereunder after the date of the resolution, and His Majesty may by Order in Council revoke the order, so, however, that any such resolution and revocation shall be without prejudice to the validity of anything previously done under the order or to the making of a new order.

(2) In reckoning any such period of forty days as aforesaid, no account shall be taken of any time during which Parliament is dissolved or prorogued, or during which both Houses are adjourned for more than four days.

3. An order under the said subsection (2) may contain such incidental and supplemental provisions as appear to the Minister expedient for the purposes of the order, and in particular may provide for the transfer to any County Agricultural Executive Committee established in pursuance of the order of any property, rights



or liabilities of any such Committee superseded by the Committee so established, and for the carrying on and completion by any such Committee so established of anything begun by any such Committee so superseded. [57]

\* \* \* \* \*

## Section 110

## THIRTEENTH SCHEDULE

## ENACTMENTS REPEALED

Session and Chapter	Short title	Extent of repeal
* * *	* * *	* * *
9 & 10 Geo. 5, c. 57	The Acquisition of Land (Assessment of Compensation) Act, 1919.	In section seven, subsection (2).
9 & 10 Geo. 5, c. 91	The Ministry of Agriculture and Fisheries Act, 1919.	Sections two to ten; in section eleven, in subsection (2) the words from "and Parts II" to the end; the Schedules.
13 & 14 Geo. 5, c. 9.	The Agricultural Holdings Act, 1923.	In section fifty-seven, in subsection (1) the definitions of "rules of good husbandry."
* * *	* * *	* * *
1 Ed. 8 & 1 Geo. 6, c. 70.	The Agriculture Act, 1937.	In section fifteen, in subsection (2) the words from "and except the council" to the end.
* * *	* * *	* * * [58]

*Acquisition of Land (Assessment of Compensation) Act, 1919, s. 7 (2).*—2 Halsbury's Statutes 1181.

*Ministry of Agriculture and Fisheries Act, 1919, ss. 2-10, 11, and Schedules.*—3 Halsbury's Statutes 452 *et seq.*, 455, 456 *et seq.*

*Agricultural Holdings Act, 1923, s. 57 (1).*—1 Halsbury's Statutes 113.

*Agriculture Act, 1937, s. 15.*—30 Halsbury's Statutes 799.

## ORDERS, CIRCULARS AND MEMORANDA

## AGRICULTURE ACT, 1947 (COMMENCEMENT) ORDER, 1947

*S. R. & O., 1947, No. 1767*

*August 8, 1947*

Whereas by sub-section (2) of section 111 of the Agriculture Act, 1947, it is provided that that Act shall come into operation on such date as His Majesty may by Order in Council appoint, and that an Order under that sub-section may appoint different dates in relation to different provisions of the Act:

Now, therefore, His Majesty is pleased by and with the advice of His Privy Council to order, and it is hereby ordered, as follows:—

1. Section 97 of the said Act shall come into operation forthwith. [59]

2. The following provisions of the said Act shall come into operation on the first day of October, 1947, that is to say, Sections 68 to 76 and the ninth and tenth Schedules, Section 77, Sections 82 to 87 and the Eleventh and Twelfth Schedules, Sections 88 to 94, Section 96, Sections 102 to 109, Section 110 (so far as it relates to the enactments set out in the Schedule to this Order) and Section 111. [60]

3. This Order may be cited as the Agriculture Act, 1947 (Commencement) Order, 1947. [61]

THE SCHEDULE  
ENACTMENTS REPEALED

Session and Chapter	Short title	Extent of repeal
9 & 10 Geo. 5, c. 91	The Ministry of Agriculture and Fisheries Act, 1919.	Sections two to ten; in section eleven, in subsection (2) the words from "and Parts II" to the end; the Schedules.
21 & 22 Geo. 5, c. 41.	The Agricultural Land (Utilisation) Act, 1931.	Sections one to four.
22 & 23 Geo. 5, c. 12.	The Destructive Imported Animals Act, 1932.	In section five, subsection (4).
1 Edw. 8 & 1 Geo. 6, c. 70.	The Agriculture Act, 1937.	In section fifteen, in subsection (2) the words from "and except the council" to the end.

[62]

## CASES

*Agriculture—Agricultural holding—Compensation for disturbance—Tenant quitting holding "in consequence of" notice to quit—Notice to quit—Tenant refusing to leave—Judgment for possession—Jurisdiction of High Court to hear special case—Agricultural Holdings Act, 1923 (c. 9), s. 12 (1), Sched. II, r. 10.*

By s. 12 (1) of the Agricultural Holdings Act, 1923: "Where the tenancy of a holding terminates by reason of a notice to quit given by the landlord, and in consequence of such notice the tenant quits the holding, then . . . compensation for the disturbance shall be payable by the landlord to the tenant in accordance with the provisions of this section . . ."

The landlords served on the tenants a notice to quit their holding which expired on October 11, 1942. The tenants disputed the validity of the notice and failed to give up possession. On October 13, 1942, the landlords issued a writ in the High Court, and, by a judgment of OLIVER, J., dated June 7, 1943, the tenants were ordered to give up possession. The judgment directed that, in default of settlement by valuers, the tenants' claim for compensation for disturbance under s. 12 of the Act of 1923 should be submitted to arbitration. The matter went to arbitration, and, by what purported to be an award in the form of a Special Case, there was submitted for the opinion of the High Court the question whether the tenants were entitled to compensation for disturbance. If they were, the arbitrator awarded them an agreed sum:—

*Held*: (i) the arbitrator had jurisdiction to act and the court had jurisdiction to deal with the Special Case.

*Lowther v. Clifford*, [1927] 1 K. B. 130, *followed*.

(ii) the question whether or not a tenant, who held over for any period after the expiration of a notice to quit and subsequently quitted the holding, could be said to have quitted the holding "in consequence of" the notice within the meaning of s. 12 (1) of the Act was a question of fact on which the finding of an arbitrator under the Act was conclusive, provided there was evidence to support it; where, as in the present case, the tenant disputed the validity of the notice and the court decided against him and he thereupon quitted the holding, the inevitable inference would be that he had done so in consequence of the notice, and a tenant who quitted in consequence of the notice, even though he did so after an interval of time, must be regarded as a "tenant" within s. 12 (1) of a "holding" within the sub-section; and, therefore, the tenants were entitled to compensation.

*Cave v. Page* ([1923] W. N. 178), *distinguished*. *Mills v. Rose* ([1923] W. N. 330), *followed*. *Hendry v. Walker* ([1927] S. L. T. 333), *disagreed with*. *Decision of Lord GODDARD, C.J.* ([1946] 2 All E. R. 461), *affirmed*.—*PRESTON v. NORFOLK COUNTY COUNCIL*, [1947] K. B. 775; [1947] 2 All E. R. 124; 177 L. T. 390; 63 T. L. R. 441, C. A. [63]

## AIR-RAID PRECAUTIONS

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## STATUTES

### NATIONAL SERVICE ACT, 1947

(10 & 11 Geo. 6, c. 31)

#### PRELIMINARY NOTE

The principal object of the National Service Acts, 1939 to 1946 (see note to s. 1, *infra*), was to apply a system of compulsory recruitment to the Armed Forces. However, in April, 1941, at a time when the nation was in extreme need of whole-time Civil Defence personnel, particularly in the Fire Service, Parliament extended the provisions of the National Service (Armed Forces) Act, 1939 (32 Halsbury's Statutes 1041), to cover compulsory enrolment for Civil Defence Forces declared to be such by or under the National Service Act, 1941, ss. 1–3 (34 Halsbury's Statutes 270 *et seq.*).

Fairly wide use of this power was made, chiefly in relation to men of military age who expressed a desire to “opt” for Civil Defence, but when the need for whole-time Civil Defence personnel diminished in the closing stages of the war these provisions of the National Service Act, 1941, were no longer utilised. On the general tidying-up effected by the present Act compulsory enrolment for Civil Defence is formally to be brought to an end as from January 1, 1949.

For other relevant sections of the Act, see the titles EDUCATION and OFFICERS OF LOCAL AUTHORITIES, *post*. [64]

*An Act to confine the operation of the National Service Acts to male British subjects and to service in the armed forces of the Crown; to make provision as to the terms and conditions of such service and as to the period for which those Acts shall continue in operation; and for purposes connected with the matters aforesaid.* [65] [18th July, 1947.]

**1. Liability to be called up for service.**—(1) Subject to the provisions of the National Service Acts, 1939 to 1946, and this Act (which Acts are hereinafter collectively referred to as the National Service Acts), every male British subject who has attained the age of eighteen years and has not attained the age of twenty-six years and is ordinarily resident in Great Britain shall, by virtue of this Act, be liable to be called upon to serve in the armed forces of the Crown for two terms of service that is to say—

(a) a term of whole-time service, that is to say, service in the regular forces for a period of twelve months or such shorter period as His Majesty may by Order in Council appoint; and

(b) a term of part-time service as defined by this Act;

and save as aforesaid no person shall be liable to be called up for service under the National Service Acts. [66]

(2) The provisions of the National Service Acts, 1939 to 1946, as amended by this Act shall apply with respect to a person liable to be called up for service by virtue of this Act and to a person called up thereunder; and references in those Acts to a person liable to be called up for service under the National Service (Armed Forces) Act, 1939 (in this Act referred to as "the principal Act") and to a person called up therefor shall be construed accordingly. [67]

*National Service Acts.*—The National Service Acts, 1939 to 1946, are the National Service (Armed Forces) Act, 1939 (32 Halsbury's Statutes 1041), referred to in the present Act as "the principal Act," the National Service (Armed Forces) Act, 1940 (33 Halsbury's Statutes 465), the National Service Act, 1941 (34 Halsbury's Statutes 270), the National Service (No. 2) Act, 1941 (34 Halsbury's Statutes 286), the National Service Act, 1942 (35 Halsbury's Statutes 231) and the National Service (Release of Conscientious Objectors) Act, 1946 (39 Halsbury's Statutes 775).

*Liability to call-up.*—This section, which takes effect from January 1, 1949, makes provision for compulsory call-up to the Forces to continue after 1948. Note, however, the phrase "save as aforesaid no person shall be liable to be called up for service under the National Service Acts." This means that, as from the beginning of 1949, persons may not be compulsorily enrolled for Civil Defence nor may women be conscripted for the Women's Services.

**28. Commencement, citation and repeal.**—(1) This Act shall, except as otherwise expressly provided therein, come into force on the first day of January, nineteen hundred and forty-nine. [68]

(2) This Act may be cited as the National Service Act, 1947; and the National Service Acts, 1939 to 1946, and this Act may be cited together as the National Service Acts, 1939 to 1947. [69]

(3) The Acts specified in the Fifth Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule. [70]

\* \* \* \* \*

*National Service Acts, 1939 to 1946.*—See note to s. 1, *supra*.

*Acts specified in the Fifth Schedule.*—See *infra*. These include the sections of the National Service Act, 1941 (34 Halsbury's Statutes 270), relating to compulsory enrolment for Civil Defence, which, as from January 1, 1949, is brought to an end.

## Section 28

## FIFTH SCHEDULE

### ENACTMENTS REPEALED

Session and Chapter	Short title	Extent of repeal
* * *	* * *	* * *
4 & 5 Geo. 6, c. 15	The National Service Act, 1941.	Sections one to three. In subsection (3) of section eight the words "or enrolment notice". Sections nine and ten. Paragraph (c) of subsection (1) of section eleven. In section twelve, in subsection (1) the definition of "civil defence force" and the words "or is to be deemed to be so registered by virtue of subsection (3) of section twelve of the principal Act" and subsection (2). Paragraph (a) of section thirteen. Sections one to four and eight and the Schedule.
5 & 6 Geo. 6, c. 4	The National Service (No. 2) Act, 1941.	
* * *	* * *	* * *

*National Service Act, 1941, ss. 1-3, 8 (3), 9, 10, 11 (1) (c), 12.—34 Halsbury's Statutes 270 et seq., 278, 280.*

*National Service (No. 2) Act, 1941, ss. 1-4, 8, and Sched.—34 Halsbury's Statutes 286 et seq., 289, 290.*

## ORDERS, CIRCULARS AND MEMORANDA

### WAR DAMAGE (INCREASE OF VALUE PAYMENTS) ORDER, 1947

*S. R. & O., 1947, No. 390*

*March 4, 1947*

The Treasury, in exercise of the power conferred upon them by sub-section (1) of Section 11 of the War Damage Act, 1943, hereby make the following Order :—

1.—(1) This Order may be cited as the War Damage (Increase of Value Payments) Order, 1947.

(2) The Interpretation Act, 1889, applies to the interpretation of this Order as it applies to the interpretation of an Act of Parliament. [72]

#### 2. In this Order

(a) " the Act " means the War Damage Act, 1943 ;

(b) " the Commission " means the War Damage Commission. [73]

3. In any case in which a value payment is payable under the following provisions of the Act, that is to say—

(a) sub-section (1) of Section 7 (which makes general provision as to the cases in which payments of cost of works and value payments respectively are to be made) ;

(b) paragraph (b) of Section 15 (which provides for the payments to be made where making good total loss is expedient for the benefit of other land) ; and

(c) paragraph (b) of sub-section (3) of Section 20 (which provides for the payments to be made for the purpose of giving effect to the provisions for securing conformity with planning requirements, etc.)

the amount thereof shall be increased by a sum equal to forty-five per cent. of the amount computed as provided by the Act. [74]

4. In any case in which a value payment is payable under the following provisions of the Act, that is to say :—

(a) Section 14 (which provides for the payments to be made when partially damaged land is compulsorily acquired) ;

(b) paragraph (b) of sub-section (2) of the said Section 20.

the amount thereof shall be increased by a sum equal to sixty per cent. of the amount computed as provided by the Act. [75]

5. In any case in which a value payment is payable under the provisions of Section 13 of the Act (which provides for the payments to be made where partial damage to land is not made good) the amount mentioned in paragraph (b) of sub-section (1) as the maximum amount which the Commission may pay in respect of the damage so far as not made good shall be increased by a sum equal to sixty per cent. thereof. [76]

**EXPLANATORY NOTE**

*(This Note is not part of the Order, but is intended to indicate its general purport)*

*The purpose of the Order is to provide for the increase of the amount of value payments to be paid under the War Damage Act, 1943. In cases where the payment is converted from a cost of works payment to a value payment by reason of the land being compulsorily purchased or of a requirement that the damage should not be made good, the increase is 60 per cent. In cases in which partial damage is not made good and the Commission have a discretion within a defined maximum as to the amount to be paid in respect of the value payment, the maximum is increased to 60 per cent. In all other cases the increase is 45 per cent.*

**ESSENTIAL WORK (RECALL TO CIVIL DEFENCE)  
(REVOCATION) ORDER, 1947**

*S. R. & O., 1947, No. 856*

*May 6, 1947*

The Minister of Labour and National Service by virtue of the powers conferred on him by Regulation 58A of the Defence (General) Regulations, 1939, as extended by the Supplies and Services (Transitional Powers) Act, 1945, and the Orders in Council made thereunder, hereby makes the following Order:—

1. This Order may be cited as the Essential Work (Recall to Civil Defence) (Revocation) Order, 1947, and shall come into force on the 14th May, 1947. [77]

2. The Essential Work (Recall to Civil Defence) Order, 1942 (which makes provision for persons to leave employment in essential work without permission and without giving notice when required to return to employment in Civil Defence) is hereby revoked. [78]

\* \* \* \* \*

**WAR DAMAGE (VALUE PAYMENT) (TIME OF PAYMENT)  
REGULATIONS, 1947**

*S. R. & O., 1947, No. 1571*

*July 23, 1947*

The Treasury, in exercise of the power conferred upon them by paragraph (b) of sub-section (1) of Section 22 of the War Damage Act, 1943, hereby make the following Regulations:—

1.—(1) These Regulations may be cited as the War Damage (Value Payment) (Time of Payment) Regulations, 1947.

(2) The Interpretation Act, 1889, applies to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament. [79]

2. The time when payments may be made under Part I of the War Damage Act, 1943, in the case of value payments and of payments under Section Eighteen of the said Act shall commence on the 10th day of November, 1947. [80]

\* \* \* \* \*

**EXPLANATORY NOTE**

*(This Note is not part of the Regulations, but is intended to indicate their general purport)*

*The purpose of these Regulations is to fix the 10th November 1947 as the date on which payment of value payments under Part I of the War Damage Act, 1943, can begin.*

## **SALE OF FOOD (LOCAL AUTHORITIES AND PUBLIC AIR RAID SHELTERS) REVOCATION ORDER, 1947**

*S. R. & O., 1947, No. 1686*

*August 5, 1947*

In exercise of the powers conferred upon him by Regulations 54B and 55 of the Defence (General) Regulations, 1939, as having effect by virtue of the Supplies and Services (Transitional Powers) Act, 1945, and of all other powers him enabling, the Minister of Food hereby makes the following Order :—

1. The Orders and Directions specified in the Schedule to this Order are hereby revoked, but without prejudice to any proceedings in respect of any contravention thereof. [81]

2. This Order shall come into force on the 11th day of August, 1947, and may be cited as the Sale of Food (Local Authorities and Public Air Raid Shelters) Revocation Order, 1947. [82]

\* \* \* \* \*

### **THE SCHEDULE**

#### **ORDERS AND DIRECTIONS REVOKED**

The Sale of Food (Public Air Raid Shelters) Order, 1940 (S. R. & O., 1940, No. 1964).

The Local Authorities (Community Kitchens and Sale of Food in Public Air Raid Shelters) Order, 1941 (S. R. & O., 1941, No. 103).

The Local Authorities (Directions to Caterers) Order, 1941 (S. R. & O., 1941, No. 298).

The following Directions under the Sale of Food (Public Air Raid Shelters) Order, 1940, viz. :—S. R. & O., 1940, Nos. 2070, 2098 ; S. R. & O., 1941, Nos. 193, 194, 278, 363, 465, 547, 633, 809, 832, 916, 925, 930, 1009, 1066, 1131, 1168, 1184, 1222, 1257, 1358, 1394, 1634, 1665 ; S. R. & O., 1942, No. 708. [83]

## **ALLOTMENTS AND SMALLHOLDINGS**

*See also AGRICULTURE*

STATUTES :—	PAGE	ORDERS, CIRCULARS AND MEMORANDA :—	PAGE
Agriculture Act, 1947, ss. 47-67, 109-111, Schedules VIII and XIII	29	Order made by the Treasury prescribing securities under s. 9 of the Land Settlement (Facilities) Act, 1919	50



## STATUTES

## AGRICULTURE ACT, 1947

(10 &amp; 11 Geo. 6, c. 48)

## PRELIMINARY NOTE

Part IV of the Agriculture Act, 1947, with which this Preliminary Note is concerned, deals with the subject of smallholdings. It repeals, with some small exceptions, the whole of the Small Holdings and Allotments Acts, 1908 to 1931 (see note to s. 49), so far as they relate to smallholdings, and substitutes therefor a new legislative code embodying a change of policy in the general approach to the subject of the provision of smallholdings.

This Part of the Act, which applies only to England and Wales (see s. 111 (3)), does not come into immediate operation but is to be brought into operation by Order in Council under s. 111 (2). Up to the time of going to press no such Order in Council had been made for that purpose.

In the past, smallholdings have been provided for a variety of reasons which have been based on social rather than on agricultural considerations, a typical example being the settlement of unemployed persons on the land. Experience has shown, however, that a person without agricultural experience or training seldom makes a success of a smallholding, and, accordingly, the policy of the present legislation is that smallholdings are to be let only to people with agricultural experience for the purpose of giving them an opportunity to become farmers on their own account. Thus, the opportunity to obtain smallholdings will, generally speaking, be limited to farm workers, who could otherwise have little prospect of advancement beyond the status of farm labourer, a state of affairs which has long meant a small intake of man-power into the agricultural industry and a consequent loss of production.

Under Part IV of the Act it is the duty of every county council (other than the London County Council) to provide at a full fair rent land for smallholdings, but only to the extent to which (1) a demand for such smallholdings exists in the county; (2) suitable land is obtainable; and (3) the smallholdings can be provided without detriment to the general interests of agriculture, that is to say, the provision of smallholdings must be subordinated to general agricultural policy.

Though as a general rule county councils alone are to be smallholdings authorities under the Act (s. 47), provision is made whereby the Minister, on application by a county borough council, may by direction constitute it a smallholdings authority (s. 65), but there is no obligation on county borough councils to apply.

Normally there will be little difficulty in making land available for smallholdings, as wide powers of acquisition, by compulsory purchase or hiring if need be (ss. 48 (1), 64 (1)), are given to smallholdings authorities, but the consent of the Minister is necessary to the exercise of these powers.

Smallholdings, which are redefined by s. 66 of the Act, can now only be let, and not sold to smallholders by means of terminable annuities as was previously possible; so that new smallholders, while they remain such, will in future always be tenant-farmers. Up to 75 per cent. of the capital required for working smallholdings may be advanced by the Minister by way of loan (s. 54 (1)).

Smallholdings authorities are empowered to provide and maintain fixed equipment on their smallholdings and to carry out improvements thereon (s. 49), with wide general powers of management (s. 51). Smallholdings are to be managed in accordance with rules of good estate management (see title AGRICULTURE, *ante*), with powers of enforcement vested in the Minister in default (s. 53). Great importance is attached to the encouragement of co-operative farming, for which special provision is made by ss. 51 (3), 52 (4), (5) and 54 (2). Where a smallholdings authority have purchased land for smallholdings they are, by s. 67 and Sched. VIII, to apply to be registered as proprietors under the Land Registration Act, 1925 (15 Halsbury's Statutes 434).

Unless covered by a general direction, smallholdings authorities must prepare schemes for submission to the Minister and, when approved by him, must develop their land for use as smallholdings in accordance therewith (s. 50).



Smallholdings committees are to be set up by smallholdings authorities holding or proposing to acquire land for smallholdings, and much of the detailed work of the authorities will be done by such committees to whom the authorities' powers and duties (other than those for raising rates and borrowing money) may be delegated (s. 61). Full records of smallholdings are to be kept (s. 62) and annual reports submitted (s. 63).

Land may be acquired or designated by the Minister himself for use as smallholdings, subject to the conditions of s. 56 or s. 57, and in general wide powers of control are exercisable by the central administration.

Subsidiary sections include provisions (ss. 58 and 59) for the Small Holdings and Allotments Account maintained under s. 51 of the Small Holdings and Allotments Act, 1908 (1 Halsbury's Statutes 274) to be wound up, and for financial assistance to be given by the Government to smallholdings authorities towards estimated loss. [84]

## ARRANGEMENT OF SECTIONS

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### PART IV

#### SMALLHOLDINGS

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[6th August, 1947.]

\* \* \* \* \*

## PART IV

## SMALLHOLDINGS

*Provision of Smallholdings*

**47. Duty of county councils to provide smallholdings.**—(1) For the purpose of affording to persons with agricultural experience an opportunity of becoming farmers on their own account, it shall be the duty of every county council, other than the London County Council, to provide smallholdings, for letting to such persons as aforesaid, to the extent to which a demand therefor is indicated by applications received by the council, suitable land can be obtained for the purpose and the smallholdings can be provided without detriment to the general interests of agriculture. [86]

(2) Any council on whom the said duty is imposed is in this Act referred to as a "smallholdings authority". [87]

*Effect of section.*—This section places on every county council (except the London County Council) a duty to provide smallholdings for letting to persons with agricultural experience who desire to become farmers on their own account. It replaces s. 1 of the Small Holdings and Allotments Act, 1926 (1 Halsbury's Statutes 323), which section placed the duty of providing small holdings on county borough councils as well as on county councils (see s. 61 (1) of the Small Holdings and Allotments Act, 1908; 1 Halsbury's Statutes 278). Now, by s. 65 (1), *post*, the duty imposed on county councils by this section may, by direction of the Minister on the application of a county borough council, be imposed on such county borough council. When no direction is in force under s. 65, but land is held by a county borough council for the purposes of smallholdings, this section is applied to that council as if it conferred on the council a power and not a duty to provide smallholdings (see s. 65 (3), (4), *post*).

*With agricultural experience.*—This qualification indicates a change of policy in the general approach to smallholdings in the interests of agriculture as a whole and also of the smallholder himself in that he can be more certain of making a success of his smallholding. No such experience was necessarily required under the Small Holdings and Allotments Act, 1926, s. 1 (1 Halsbury's Statutes 323), or the Agricultural Land (Utilisation) Act, 1931, s. 5 (24 Halsbury's Statutes 53).

*County councils.*—It was possible, under s. 9 of the Small Holdings and Allotments Act, 1926 (1 Halsbury's Statutes 329), for a county council to delegate the exercise of its powers, or any of them, in respect of the acquisition, adaptation and management of small holdings to the council of a borough or urban or rural district. No such delegation is possible under this Act. As to county borough councils, see *supra*.

*Smallholdings.*—A smallholding is defined for the purposes of this Act by s. 66, *post*.

*Letting.*—The duty extends only to letting land for smallholdings, unlike the provisions

of s. 1 of the Small Holdings and Allotments Act, 1926 (1 Halsbury's Statutes 323), which provided also for sale to the smallholder.

*Suitable land.*—The duty is limited to the provision of suitable land. The smallholdings authority is not confined within its own boundaries in the acquisition of suitable land (see s. 48 (3), *post*).

*Without detriment to the general interests of agriculture.*—Smallholdings policy requires that the provision of smallholdings should be determined by agricultural considerations rather than by considerations of social policy, as in the past. Consequently, this requirement will prevent the provision of smallholdings out of land which is already being worked economically as part of a larger agricultural holding.

*Any council.*—This will be a county council, or, under s. 65, *post*, a county borough council.

#### 48. Acquisition by smallholdings authority of land for smallholdings.—

(1) A smallholdings authority shall have power, if so authorised by the Minister, to acquire land for the purposes of smallholdings by agreement, or by compulsory purchase or hiring in accordance with the provisions of this Act in that behalf. [88]

(2) In deciding whether to authorise any acquisition of land under this section, the Minister shall have regard, among other things, to the suitability of the land for the purpose for which it is proposed to be acquired, the probable cost of the acquisition thereof and the general interests of agriculture. [89]

(3) Before a smallholdings authority proceed to acquire under this section land outside their area, they shall consult with the council of the county or county borough in whose area the land is situated. [90]

(4) Where a smallholdings authority have been authorised to acquire land for the purposes of smallholdings they shall not, except where in special circumstances it appears to them requisite so to do, exercise their powers of acquisition so as to require any person farming the land to give up his occupation of the land before such time as the authority are satisfied that the land is required, and can be adapted, for the purposes of smallholdings. [91]

(5) Any person authorised by a smallholdings authority in that behalf shall have power at all reasonable times to enter on and inspect any land for the purpose of ascertaining whether the land is suitable for acquisition by the authority under this section. [92]

*Effect of section.*—This section empowers a smallholdings authority to acquire land for smallholdings by agreement, or by compulsory purchase or hiring, subject to the Minister's approval. Land may also be acquired outside the authority's own area, but only after consultation with the council of the county or county borough in whose area the land is situated. When land authorised to be acquired is being farmed by the occupier, the authority must not require him to give up his occupation until the land is actually required and can be adapted for the purposes of smallholdings. The section gives a power of entry on land to persons authorised by the smallholdings authority.

*The Minister.*—The Minister of Agriculture and Fisheries.

*In accordance with the provisions of this Act.*—The provisions relating to the compulsory purchase of land are contained in s. 92, and those relating to compulsory hiring in ss. 93 and 94; see title AGRICULTURE, *ante*. Acquisition of land by a council for the provision of smallholdings was previously regulated by s. 4 of the Small Holdings and Allotments Act, 1926 (1 Halsbury's Statutes 324), and ss. 38–43 of the Small Holdings and Allotments Act, 1908 (1 Halsbury's Statutes 265), as amended by the Acquisition of Land (Authorisation Procedure) Act, 1946, s. 6 and Sched. IV (39 Halsbury's Statutes 60).

*Cost of acquisition.*—Provision is made by s. 58, *post*, for contributions to be made by the Minister to losses incurred by smallholdings authorities in carrying out their duties under this Part of the Act.

*General interests of agriculture.*—See note to s. 47, *ante*.

*Farming.*—This expression includes the carrying on in relation to the land of any agricultural activity (s. 109 (5)).

*Definitions.*—For definition of "smallholdings authority," see s. 47, *ante*; and for that of "smallholdings," see s. 66, *post*.

#### 49. Power of smallholdings authority to provide fixed equipment, etc.—

(1) A smallholdings authority shall have power to provide, improve, maintain and repair fixed equipment on land held by the authority for the purposes of smallholdings and to carry out any other improvements on or for the benefit of any such land, and to enter into an agreement with a tenant of any such land for the provision, improvement, maintenance, repair or carrying out thereof by the tenant on such terms as may be specified in the agreement. [93]

(2) References in this Part of this Act to land held by an authority for the purposes of smallholdings shall be construed as including references to land any interest in which is so held, other than a right to take possession arising under the provisions of the Small Holdings and Allotments Acts, 1908 to 1931. [94]

*Effect of section.*—This section gives smallholdings authorities power to provide, improve, maintain and repair fixed equipment on land held for smallholdings, to carry out improvements on or for the benefit of such land and to enter into agreements with tenants for the undertaking or carrying out of such matters by the tenants themselves.

*Fixed equipment.*—For the definition of this expression for the purposes of this Act, see s. 109 (3), *post*. By s. 14 of the Small Holdings and Allotments Act, 1926 (1 Halsbury's Statutes 330), councils had power to make advances for the purposes of constructing, altering or adapting houses and farm buildings on smallholdings, but no power to carry out such improvements themselves.

*Right to take possession.*—By s. 6 of the Small Holdings and Allotments Act, 1926 (1 Halsbury's Statutes 325), councils have the right to take possession of smallholdings sold under that Act, so long as the holdings remain charged with terminable annuities should a breach of the conditions of holding occur. This s. 6 is continued in operation with modifications in relation to smallholdings sold or let before the commencement of this Part of this Act, by s. 67 (2) and Sched. VIII, *post*.

*Small Holdings and Allotments Acts, 1908 to 1931.*—This collective title was given by the Agricultural Land (Utilisation) Act, 1931, s. 25 (1) (24 Halsbury's Statutes 66), to the following Acts:—Small Holdings and Allotments Act, 1908 (1 Halsbury's Statutes 257); Small Holdings Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 34) (repealed); Land Settlement (Facilities) Act, 1919 (1 Halsbury's Statutes 288) (so much of this Act as amends the 1908 and 1910 Acts); Small Holdings and Allotments Act, 1926 (1 Halsbury's Statutes 322), and Agricultural Land (Utilisation) Act, 1931, Part II (24 Halsbury's Statutes 53 *et seq.*).

*Definitions.*—For definition of "smallholdings authority," see s. 47, *ante*; and for that of "smallholdings," see s. 66, *post*.

**50. Lay-out and equipment of smallholdings to be carried out in accordance with scheme approved by Minister.**—(1) Except in so far as may be allowed by general directions of the Minister under this subsection, a smallholdings authority shall not proceed with the creation and equipment of smallholdings, with the alteration of the size or lay-out of existing smallholdings or the provision or improvement of fixed equipment thereon, or otherwise with the erection of buildings or the carrying out of work on land held by the authority for the purposes of smallholdings, except in accordance with the provisions of a scheme made by the authority and submitted to the Minister and approved by him. [95]

(2) Any such scheme shall contain such particulars as to—

- (a) nature, size and lay-out of smallholdings,
- (b) provision or improvement of fixed equipment,
- (c) total estimated cost of the proposals, and
- (d) such other matters as the Minister may either generally or in any particular case direct,

as may be reasonably necessary for informing the Minister as to the proposals to which the scheme relates, and shall be in such form as the Minister may so direct. [96]

(3) Any scheme made and approved under this section may be varied by a subsequent scheme so made and approved. [97]

(4) Where it appears to the Minister that any existing smallholdings provided by a smallholdings authority are of less or greater extent than is likely to be required for the provision of a reasonable livelihood or that in the case of any such smallholdings as aforesaid it is expedient so to do in the interests of efficient farming, he may direct that the authority shall alter the size or lay-out of the smallholdings in such manner as may be specified in the direction. [98]

*Effect of section.*—This section provides for ministerial control over the lay-out and equipment of smallholdings by the smallholdings authority. Except in so far as may be allowed by general directions of the Minister under sub-s. (1), no action may be taken by a smallholdings authority on the matters laid down in that sub-section unless incorporated in a scheme approved by the Minister. Sub-s. (2) details the particulars to be included in any scheme submitted to the Minister. By sub-s. (4) the Minister may require alterations in the lay-out or size of existing smallholdings in the interests of efficient farming.

*General directions.*—The provision for the making of general directions is intended to obviate the necessity of smallholdings authorities having to seek the formal approval of the Minister for minor improvements and adjustments in lay-out.

*The Minister.*—The Minister of Agriculture and Fisheries.

*Definitions.*—For definition of "smallholdings authority," see s. 47, *ante*; and for that of "smallholdings," see s. 66, *post*. As to "fixed equipment," see s. 109 (3), *post*.

### *Management of Authorities' Smallholdings*

**51. General powers of smallholdings authority.**—(1) The powers of a smallholdings authority shall, subject to the provisions of this Part of this Act, include all powers required by the authority for the management of land for the time being held by the authority for the purposes of smallholdings. [99]

(2) A smallholdings authority shall have power, for the benefit of the occupiers of smallholdings provided by the authority, to further the formation of bodies of persons, whether corporate or unincorporated, having for their object or one of their objects the promotion through co-operative methods of efficiency in the conduct of smallholdings, and to assist the carrying on and extension of the activities of such bodies. [100]

(3) A smallholdings authority shall have power—

(a) to such extent as appears to the authority expedient for the purpose of assisting the conduct of smallholdings provided by the authority or of promoting co-operative schemes for the conduct thereof, to acquire by purchase or hiring, and to sell or let on such terms as may be decided by the authority, machinery and other equipment, live or dead stock, seeds, fertilisers and any other requisites, and to provide on such terms as aforesaid services; and

(b) to carry out arrangements made by the authority, for the purposes of such schemes as aforesaid, for the disposal by the authority of the produce of smallholdings provided by them. [101]

(4) It is hereby declared that the provisions of section forty-nine of this Act and the foregoing provisions of this section with respect to the powers of smallholdings authorities relate only to their capacity as corporations; and nothing in those provisions shall be construed as authorising any act or omission on the part of a smallholdings authority which is actionable at the suit of any person on any ground other than the limitation of their said capacity. [102]

*Effect of section.*—This section gives to smallholdings authorities, as corporations, general powers of management of the land they hold for the purposes of smallholdings. It also gives special powers of furthering the formation of co-operative bodies for the efficient conduct of smallholdings, of assisting the conduct of smallholdings by providing equipment and other requisites, and of carrying out schemes for the disposal of produce. Sub-s. (4) declares that smallholdings authorities are in no specially privileged position in carrying out their powers under s. 49 and this section. The powers given by these sections extend the authorities' capacity as corporations, but in other respects, in the exercise of those powers, the authorities are in the same position as ordinary individuals.

*Bodies of persons.*—By s. 49 of the Small Holdings and Allotments Act, 1908 (1 Halsbury's Statutes 272), local authorities had similar power to that given by this section in promoting the formation of societies working on a co-operative basis, except that the power to make grants or loans is now possessed by the Minister alone (see s. 54 (2), *post*).

*Definitions.*—For definition of "smallholdings authority," see s. 47, *ante*; and for that of "smallholdings," see s. 66, *post*. As to "livestock" and "produce," see s. 109 (3), *post*.

**52. Letting of smallholdings.**—(1) Smallholdings provided by a smallholdings authority shall be let to the persons by whom the smallholdings are to be farmed in accordance with the following provisions of this Part of this Act:

Provided that nothing in this section shall affect any letting in force at the commencement of this Part of this Act. [103]

(2) Every letting of a smallholding by the authority shall be at a full fair rent, that is to say, at such rent as a tenant might reasonably be expected

to pay for the smallholding if let as such on the terms (other than terms as to rent) on which it is in fact let. [104]

(3) Subject to the provisions of the next following subsection,—

(a) a smallholdings authority shall not let a smallholding to any person unless they are satisfied that the said person has had sufficient agricultural experience to render it likely that he is or will become qualified to be a farmer on his own account; and

(b) in selecting persons to whom smallholdings are to be let preference shall be given, as between persons otherwise equally suitable, to applicants who at the time of the application are employed under a contract of service as agricultural workers or who under regulations made by the Minister are to be treated as if they were then so employed. [105]

(4) A smallholdings authority may with the approval of the Minister let a smallholding, or two or more smallholdings together, to persons proposing to farm the smallholding or smallholdings on a co-operative system, notwithstanding that all of the said persons have not had such experience as aforesaid, but before approving any letting under this subsection the Minister shall satisfy himself that the aggregate agricultural experience of the said persons is such as to render it likely that in co-operation they are or will become qualified to farm on their own account. [106]

(5) Where any of the persons applying for the letting to them of a smallholding under the last foregoing subsection is at the time of the application employed, or under paragraph (b) of subsection (3) of this section to be treated as employed, under a contract of service as an agricultural worker, the Minister may direct that all the said persons shall be treated for the purposes of the said paragraph (b) as if they were then so employed. [107]

(6) Where it appears to the Minister that a smallholdings authority is not complying with any requirement imposed by or under this Part of this Act as to the selection of tenants of smallholdings, the Minister may direct that until the direction is revoked no letting of a smallholding provided by the authority shall be made except to a person approved by the Minister, but the giving of such a direction shall not prejudice any right of the tenant under a letting made in contravention of the direction. [108]

(7) Notwithstanding anything in the foregoing provisions of this section or in section forty-seven of this Act, where land held by a smallholdings authority for the purposes of smallholdings is not for the time being required or adapted for use for those purposes, the authority may with the consent of the Minister let the land for such period and for such purpose as appears to them expedient, at the best rent which appears to the authority to be obtainable therefor for that purpose and on such other terms as they may determine. [109]

*Effect of section.*—This section lays down the rules governing the letting of smallholdings under this Part of the Act. Every letting is to be at a full fair rent, and tenants are to have sufficient agricultural experience to make it likely that the smallholdings will be successfully run. Lettings may, with the approval of the Minister, be made to two or more persons to work a smallholding, or two or more smallholdings together, on a co-operative system. In such a case it is the aggregate of the prospective tenants' agricultural experience to which regard is to be had in determining whether the letting should be made. In the selection of tenants preference is to be given to those already employed as agricultural workers, or such other persons as the Minister may by regulation direct are to be treated as if so employed. The Minister has power under sub-s. (6) to control lettings where it appears to him that the smallholdings authorities are not complying with the requirements of this Part of the Act. Sub-s. (7) authorises the temporary letting of surplus land.

*Letting in force.*—By s. 67 (2) and Sched. VIII, Part II, *post*, the provisions as to the sale and letting of smallholdings contained in ss. 5-7 of the Small Holdings and Allotments Act, 1926 (1 Halsbury's Statutes 325 *et seq.*), are continued in operation, with modifications, in relation to smallholdings sold or let before the commencement of this Part of the Act. The modifications in question prevent any further sale or letting, contrary to the provisions of this Part of the Act, from taking place under the continued provisions of the said ss. 5-7.

*Commencement of this Part.*—By s. 111 (2), this Part of the Act is to be brought into operation on a date to be appointed by Order in Council. Up to the time of going to press no such date had been appointed.



*Full fair rent.*—For the purposes of smallholdings under the Small Holdings and Allotments Acts, 1908 to 1931, the expression "full fair rent," in relation to smallholdings, is defined as "the rent which a tenant might reasonably be expected to pay for the holding if let as such and the landlord undertook to bear the cost of structural repairs" (see s. 2 (6) of the Small Holdings and Allotments Act, 1926; 1 Halsbury's Statutes 324). By s. 49 of the present Act, *ante*, smallholdings authorities are empowered to carry out such repairs or arrange for them to be carried out by the tenants. The rent, by sub-s. (2) of this section, is related to the terms of the actual letting of the smallholdings.

*Agricultural experience.*—See note to s. 47, *ante*.

*Regulations.*—S. 55 (1) (b), *post*, empowers the Minister to make regulations as to the selection of tenants. This power permits the Minister to direct that preference shall be given, equally with others, to persons, such as the sons of small farmers, who are to all intents and purposes in the same position as agricultural workers.

*The Minister.*—The Minister of Agriculture and Fisheries.

*Co-operative system.*—Smallholdings authorities have power under s. 51, *ante*, to promote and further co-operative schemes for the conduct of smallholdings, and by s. 54 (2), *post*, the Minister has power to make grants or loans to any co-operative societies having as one of their objects the promotion of efficiency in the conduct of smallholdings.

*Definitions.*—For definition of "smallholdings," see s. 60, *post*; and for that of "smallholdings authority," see s. 47, *ante*.

**53. Duty of smallholdings authority to manage in accordance with rules of good estate management.**—(1) Where it appears to the Minister that a smallholdings authority have in any respect failed to fulfil their responsibilities to manage in accordance with the rules of good estate management land held by them for the purposes of smallholdings, the Minister may direct that the authority shall within such time as may be specified in the direction carry out such work on the land as may be so specified, being work which in the opinion of the Minister is necessary to remedy the non-fulfilment of their said responsibilities. [110]

(2) If a smallholdings authority fail to comply with a direction under this section, any person authorised by the Minister in that behalf may enter on the land in question and carry out the work, and the reasonable cost of the carrying out thereof shall be recoverable by the Minister from the smallholdings authority. [111]

(3) Any dispute arising under the last foregoing subsection as to what is the reasonable cost of any work shall be determined by the arbitration of an arbitrator appointed in default of agreement by the President of the Royal Institution of Chartered Surveyors. [112]

(4) The provisions of Part II of this Act as to supervision orders and directions to secure good estate management shall not apply to the management by smallholdings authorities of land held by them for the purposes of smallholdings. [113]

*Effect of section.*—This section gives the Minister control over smallholdings authorities who fail to manage their smallholdings in accordance with the rules of good estate management. The Minister can give directions to such authorities without the necessity of a supervision order under s. 12 of the Act. If smallholdings authorities fail to comply with directions of the Minister under this section the Minister himself may cause the work to be carried out and may recover the cost from the authorities concerned. The default power given to the Minister by this section relates specifically to breach of duty on the part of the authorities in respect of their management of smallholdings; a general residuary power to act in default of smallholdings authorities is also given by s. 57, *post*.

*The Minister.*—The Minister of Agriculture and Fisheries.

*Definitions.*—For definition of "smallholdings authority," see s. 47, *ante*; and for that of "smallholdings," see s. 60, *post*.

**54. Loans for smallholdings purposes.**—(1) The Minister may make loans to provide working capital for a tenant or prospective tenant of a smallholding provided by a smallholdings authority, of an amount not exceeding three-quarters of the estimated aggregate working capital required for the proper working of the smallholding.

In this subsection the expression "working capital" includes sums payable by an incoming tenant in respect of compensation to an outgoing tenant. [114]

(2) The Minister may make grants or loans to any body of persons, whether corporate or unincorporated, having for its object or one of its

objects the promotion through co-operative methods of efficiency in the conduct of smallholdings. [115]

(3) The powers of the Minister under this section shall be exercised in accordance with arrangements made by him with the approval of the Treasury. [116]

*Effect of section.*—This section empowers the Minister to make loans to tenants or prospective tenants up to a maximum of 75 per cent. of the working capital required for the proper working of their smallholdings, and also to make grants or loans to bodies of persons working on a co-operative basis. The arrangements made by the Minister for the exercise of his powers under this section are subject to Treasury approval.

Under this Act only the Minister has power to make loans for smallholdings purposes. Under the previously existing legislation, the local authority concerned had powers of making advances and grants to co-operative societies and of advancing money for the purchase and equipment of smallholdings (see s. 49 of the Small Holdings and Allotments Act, 1908 (1 Halsbury's Statutes 272), and ss. 13 and 14 of the Small Holdings and Allotments Act, 1926 (1 Halsbury's Statutes 329)). The said ss. 13 and 14 are continued in operation in relation to loans made before the commencement of Part IV of this Act (s. 67 (2) and Sched. VIII, Part II, *post*).

*The Minister.*—The Minister of Agriculture and Fisheries.

*Definitions.*—For definition of "smallholding," see s. 66, *post*; and for that of "smallholdings authority," see s. 47, *ante*. As to "body of persons," see s. 51, *ante*.

**55. Supplementary provisions as to management of authorities' smallholdings.**—(1) The Minister may make regulations as to—

- (a) the management of land held by smallholdings authorities for the purposes of smallholdings, including in particular the matters to be dealt with in agreements for the letting of smallholdings; and
- (b) the selection of tenants to whom smallholdings are to be let by a smallholdings authority. [117]

(2) In considering for the purposes of sections thirty and thirty-one of this Act whether the interest of a smallholdings authority has been prejudiced as mentioned in paragraph (c) of subsection (1) of the said section thirty, regard shall be had to the effect of the breach of a term or condition in question not only on the smallholding but also on the carrying out by the authority of its arrangements for the provision and conduct of smallholdings. [118]

*Effect of section.*—Sub-s. (1) of this section empowers the Minister to make regulations as to the management of smallholdings and the selection of tenants. Sub-s. (2) lays down that any breach of a tenancy agreement, on the part of a tenant, which prejudices the interest of a smallholdings authority shall be liable to give rise to loss of compensation for disturbance not only if individual damage is caused to the smallholding in question but also if irremediable damage is caused to the authority's arrangements for smallholdings.

Any such regulations are to be laid before Parliament, where they are to be subject to annulment by either House within forty days of being so laid (see s. 108 (1), title AGRICULTURE, *ante*).

*The Minister.*—The Minister of Agriculture and Fisheries.

*Management.*—For the powers and duties of management of smallholdings authorities, see ss. 51–53, *ante*.

*Selection of tenants.*—One of the subjects to be covered by regulations is the determination of persons to be treated as if employed under a contract of service as agricultural workers for receiving preferential treatment in the letting of smallholdings under s. 52 (3), (5), *ante*. Failure to comply with regulations as to the selection of tenants may give rise to a direction under sub-s. (6) of that section, *ante*.

S. 30.—This section lays down conditions for the payment to a tenant of compensation for disturbance. By sub-s. (1) thereof compensation is declared not to be payable where notice is given as the result of certain conditions arising. Sub-s. (1) (c) of the said s. 30 makes compensation for disturbance not payable if the holding has been materially and irremediably prejudiced by the breach by the tenant of any term or condition of the tenancy. To this is added, by sub-s. (2) of the present section, the additional necessity of considering whether the smallholdings authority's arrangements for the provision and conduct of its smallholdings have been materially and irremediably prejudiced by the breach.

S. 31.—This section places restrictions on the termination by notice of tenancies of holdings.

*Definitions.*—For definition of "smallholdings authority," see s. 47, *ante*; and for that of "smallholding," see s. 66, *post*.

### *Provision of Smallholdings by the Minister*

**56. Power of Minister to provide smallholdings.**—(1) The Minister may provide smallholdings for letting to persons with previous agricultural experience with a view to affording such persons an opportunity of becoming



farmers on their own account, and may acquire land for the purposes of smallholdings by compulsory purchase or hiring in accordance with the provisions of this Act in that behalf. [119]

(2) In relation to any land acquired under the last foregoing subsection, and to any other land designated by the Minister as being held by him for the purposes of smallholdings, the Minister may exercise the like powers, and shall be subject to the like obligations, as under sections forty-nine, fifty-one and fifty-two of this Act are exercisable by or incumbent on a smallholdings authority. [120]

(3) Subject to the provisions of section fifty-two of this Act and the last foregoing subsection, nothing in this Part of this Act shall affect the operation, in relation to land designated as aforesaid, of the provisions of any enactment or instrument requiring preference to be given to persons who have served in the armed forces of the Crown during any war to which the Termination of the Present War (Definition) Act, 1918, applied. [121]

(4) Section fifty-four of this Act shall apply in relation to smallholdings provided by the Minister as it applies in relation to smallholdings provided by a smallholdings authority, and subsection (2) of section fifty-five of this Act shall so apply with the substitution for references to a smallholdings authority of references to the Minister. [122]

*Effect of section.*—This section empowers the Minister to provide smallholdings. In relation to any land which he acquires either by agreement or compulsorily under this section or which he designates as being held by him for the purposes of smallholdings the Minister has the same powers as are granted to a smallholdings authority by ss. 49, 51, 52, *ante*. Letting of land acquired for the purposes of this section will be in accordance with s. 52, *ante*, but when land is designated under sub-s. (2) and is land acquired for providing holdings for ex-servicemen of the First World War, the existing provisions as to preferential rights for such ex-servicemen are not affected, subject, however, to the powers of the Minister to make regulations as to the selection of tenants.

*The Minister.*—The Minister of Agriculture and Fisheries.

*Previous agricultural experience.*—See note to s. 47, *ante*.

*Provisions of this Act.*—For provisions as to compulsory purchase and hiring, see ss. 92-97, title AGRICULTURE, *ante*.

*Provisions of any enactment.*—Preference in the selection of persons to be settled on land acquired by the Minister under the Small Holding Colonies Act, 1916 (1 Halsbury's Statutes 284) is, by that Act, s. 1 (3), to be given to persons who have served in the Armed Forces in the First World War.

**57. Default powers of Minister.**—(1) Without prejudice to the provisions of the last foregoing section, where the Minister is satisfied that the functions of a smallholdings authority are not being satisfactorily exercised by the authority, the Minister may in any case where no power to give directions in that behalf is otherwise conferred on him by this Part of this Act direct that the authority shall exercise any of their functions in such manner as may be specified in the direction, or may by order transfer to himself such of the functions of the authority (including the expenditure of money whether on revenue or on capital account) as may be specified in the order. [123]

(2) Before—

- (a) making an order under the last foregoing subsection, or
- (b) coming to a decision on any application made by a smallholdings authority for the revocation of such an order relating to them, being an application made not earlier than twelve months after the making of the order or of any previous application for the revocation thereof,

the Minister shall give to the smallholdings authority in question an opportunity of making representations to him and shall take into consideration any representations made and, if the authority so requires, afford to the authority an opportunity of being heard by a person appointed by the Minister for the purpose. [124]

(3) Where the Minister makes an order under subsection (1) of this section, any exercise of the functions conferred on him by the order shall

have effect as if he were an agent of the authority duly authorised in that behalf, but—

- (a) any expenses incurred by the Minister in the exercise of the said functions shall be defrayed in the first instance by the Minister ;
- (b) the Minister shall certify, as respects such successive periods as he may determine, the amount of the expenses so incurred in each such period and the amount of any receipts of the Minister in each such period from the exercise of the said functions, and the difference between the said amounts, as certified by the Minister, shall be recoverable by him from the authority or payable by him to the authority, as the case may require. [125]

(4) An order varying or revoking an order under subsection (1) of this section may contain such provision with respect to the transfer, vesting and discharge of any property or liabilities acquired or incurred by the Minister in the exercise of any of the functions to which the order varied or revoked relates as appears to the Minister expedient for the purposes of the varying or revoking order. [126]

*Effect of section.*—This section gives the Minister power, when he is satisfied that smallholdings authorities are not exercising their functions and he has no power other than relevant powers of direction under this Part of the Act, to direct the authorities to exercise their functions in a specified way ; or he may by order transfer all or any of their functions to himself. Smallholdings authorities have the right to make representations to the Minister before any such orders are made. They have a similar right of representation before the Minister decides upon applications by authorities for revocation of previous orders. If the Minister exercises any functions so taken over by him, he will do so as agent of the authority. Expenses incurred are, in the first instance, to be defrayed by the Minister, but the difference between expenditure and receipts over a period of time are recoverable from or payable to the smallholdings authority as the case may be.

The previously existing power of the Minister to act in default of local authorities arose under s. 9 of the Agricultural Land (Utilisation) Act, 1931 (24 Halsbury's Statutes 57), and was confined to cases where the authorities had, in the Minister's opinion, failed to provide sufficient smallholdings. On representations by the authorities that such was not the case, the Minister was obliged to hold a local inquiry.

*The Minister.*—The Minister of Agriculture and Fisheries.

*Otherwise conferred.*—See s. 50 (4) for directions affecting schemes ; s. 52 (6) for directions as to selection of tenants, and s. 53 (1) for directions as to good estate management.

*Person appointed.*—No officer or servant of a County Agricultural Executive Committee or district committee thereof is to be appointed to receive representations relating to land in the area of the committee (s. 104 (5)).

*Definitions.*—"Functions" includes powers and duties (s. 109 (3), *post*). For definition of "smallholdings authority," see s. 47, *ante*.

### *Financial Provisions*

**58. Contributions by Minister to losses incurred by smallholdings authorities.**—(1) Where a smallholdings authority have after the commencement of this Part of this Act formulated proposals for the provision of smallholdings or for the laying out, alteration or equipment of smallholdings provided by the authority, and it appears to the authority that the proposals are likely to involve them in a loss, they may submit to the Minister estimates, in such form and containing such particulars as the Minister may prescribe, of the expenditure which the proposals will involve, whether on capital or revenue account, and of the receipts which will accrue from the proposals, whether by way of rent or otherwise. [127]

(2) Where estimates are submitted to the Minister under the last foregoing subsection, the Minister may approve the proposals and estimates either with or without modifications, and if the proposals are carried out as approved by the Minister, the Minister may, subject to such conditions as to records, certificates, audit and otherwise as he may with the approval of the Treasury prescribe, make or undertake to make contributions towards losses incurred by the smallholdings authority in the carrying out of the proposals. [128]

(3) Subject to the provisions of the next following subsection, contribu-

tions made by the Minister under this section to any authority shall be annual contributions not exceeding three-quarters of the amount by which in carrying out the proposals in question the authority's receipts in respect of the year for which each contribution is made, as estimated in the estimates approved under subsection (2) of this section, fall short of their expenditure in respect of the said year, as estimated as aforesaid :

Provided that in so far as the said expenditure consists of the payment of interest or sinking fund charges on moneys borrowed for the purpose of carrying out the proposals, the amount thereof shall be calculated for the purposes of this subsection by reference to the actual amount of the moneys so borrowed. [129]

(4) The Minister shall not make an annual contribution under this section for any year earlier than the first year in which in his opinion the proposals of the smallholdings authority have been brought into full operation ; but in respect of all such earlier years taken together the Minister may make to the authority a contribution not exceeding three-quarters of the amount by which the actual receipts of the authority in respect of those years in carrying out the proposals fall short of their actual expenditure in respect of those years in the carrying out thereof, the said expenditure being calculated, in so far as it consists of expenses of management, in such manner as the authority may with the approval of the Minister determine. [130]

(5) Where a smallholdings authority have submitted estimates under subsection (1) of this section in connection with any proposals, and the authority subsequently vary their proposals, the authority shall submit to the Minister such estimates in relation to the proposals as varied as are specified in subsection (1) of this section ; and—

(a) the foregoing provisions of this section shall apply, in relation to the making of contributions in respect of any period after the submission of the last-mentioned estimates, as if those estimates and the proposals as varied had been the original estimates and proposals of the authority ;

(b) the Minister may vary any agreement to make contributions made by him under this section accordingly. [131]

(6) Where the Minister is satisfied that a smallholdings authority has reasonably incurred expenses in connection with the preparation of such proposals and estimates as aforesaid, or in connection with preparations for the acquisition of land for the purposes of any such proposals, and the proposals are not carried out, the Minister may make to the authority a contribution towards the expenses of an amount not exceeding three-quarters thereof. [132]

(7) The Minister may with the approval of the Treasury make regulations for the purposes of the foregoing provisions of this section, and in particular such regulations—

(a) may make provision for treating the submission of a scheme which is approved under section fifty of this Act as if it were the submission of estimates under subsection (1) or subsection (5) of this section, and for withholding or reducing contributions where the approval of the Minister is not obtained under the said section fifty or where in any other respect a smallholdings authority do not comply with any requirement imposed on them by or under this Part of this Act in relation to smallholdings provided by them ;

(b) may empower the Minister, as a condition of consenting to the sale, letting or appropriation of any of the land to which estimates submitted under this section relate, to require the submission to him of revised estimates, and may provide for the adjustment of any contributions in accordance with revised estimates so submitted ;

- (c) may make provision as to the making of applications for the payment of contributions agreed to be made by the Minister under this section and as to the time at which payments of contributions under this section may be made. [133]

*Effect of section.*—This section enables smallholdings authorities expecting their proposals for the provision, laying out, alteration or equipment of smallholdings to result in loss to ask for contributions from the Minister, who may contribute not more than 75 per cent. of the estimated loss on the carrying out of the proposals. Contributions may also be made to expenses incurred in the preparation of proposals which are not, in fact, carried out (sub-s. (6)).

*Commencement of this Part of this Act.*—See note to s. 52, *ante*.

*Proposals.*—See s. 50, *ante*.

*The Minister.*—The Minister of Agriculture and Fisheries.

*Payment of interest or sinking fund charges.*—The amount of expenditure on account of such payments is to be calculated by reference to the *actual* amount of moneys borrowed, and not on the amount *estimated* to be borrowed.

*Annual contribution.*—Such contribution by the Minister commences in the first year in which, in the Minister's opinion, the authority's proposals have been brought into full operation.

*Earlier years.*—Years prior to the first year of full operation are treated as one accounting period for the purpose of contribution, the amount being based on actual loss.

*Definition.*—For definition of "smallholdings authority," see s. 47, *ante*.

**59. Winding-up of Small Holdings and Allotments Account.**—The Small Holdings and Allotments Account shall, in accordance with directions of the Treasury, be wound up as at such date as the Treasury may direct, being a date not later than the end of the financial year next after that in which this Part of this Act comes into operation, and—

- (a) any payments which apart from this section would be authorised to be paid out of that Account shall, if falling due after that date, be defrayed out of moneys provided by Parliament;
- (b) any balance in the said Account at that date, and any receipts of the Minister after that date, being receipts which apart from this section would be authorised to be paid into that Account, shall be paid into the Exchequer. [134]

*Effect of section.*—This section provides for the winding up of the Small Holdings and Allotments Account in accordance with Treasury directions, and the payment of any balance to the Exchequer. In future, payments are to be defrayed out of moneys provided by Parliament.

*Small Holdings and Allotments Account.*—By s. 51 of the Small Holdings and Allotments Act, 1908 (1 Halsbury's Statutes 274), the "Small Holdings Account" opened at the Bank of England under the Small Holdings and Allotments Act, 1907, was continued for the purposes of that Act. The "Small Holdings Account" was renamed the "Small Holdings and Allotments Account" by s. 17 (2) of the Agricultural Land (Utilisation) Act, 1931 (24 Halsbury's Statutes 62).

*Comes into operation.*—See note to s. 52, *ante*.

*The Minister.*—The Minister of Agriculture and Fisheries.

**60. Accounts, etc., of smallholdings authorities.**—(1) A smallholdings authority shall keep a separate account of its receipts and expenses with respect to smallholdings and any such receipt shall be applicable only for smallholdings purposes, unless the consent of the Minister of Health is obtained to its application for other purposes. [135]

(2) Where the receipt or payment of money is under this Part of this Act entrusted by a smallholdings authority to any committee or sub-committee of the authority, the accounts thereof shall be accounts of the authority, and made up and audited accordingly. [136]

*Effect of section.*—This section makes provision, similar to that contained in s. 54 of the Small Holdings and Allotments Act, 1908 (1 Halsbury's Statutes 277), for the keeping of separate accounts by smallholdings authorities of their receipts and expenditure. It provides also that receipts in respect of smallholdings are not to be applied for any purposes other than smallholdings, except with the consent of the Minister of Health.

*Committee or sub-committee.*—See s. 61, *post*, as to the constitution of smallholdings committees.

*Definitions.*—For definition of "smallholdings authority," see s. 47, *ante*; and for that of "smallholdings," see s. 66, *post*.

*Supplementary Provisions*

**61. Constitution and functions of smallholdings committees.**—(1) For every smallholdings authority for the time being holding, or proposing to acquire, land for the purposes of smallholdings, there shall be constituted a smallholdings committee. [137]

(2) There shall be referred to the smallholdings committee for report and recommendation all matters relating to the exercise by the smallholdings authority of their functions in relation to smallholdings; and the committee shall have power to refer as aforesaid to a sub-committee all or any of the matters referred to the committee under this subsection. [138]

(3) The council of a county may refer as aforesaid to the smallholdings committee constituted by them under this section any other matters relating to the exercise of the council's functions in connection with agriculture, except matters which under any enactment other than an enactment contained in this Part of this Act are required to be so referred to some other body, and where any such other matters are so referred to the smallholdings committee that committee shall have power so to refer to a sub-committee all or any of the matters referred to the committee. [139]

(4) Where under the foregoing provisions of this section any matter is authorised or required to be referred to a committee or sub-committee, there may be delegated to them, either with or without conditions or restrictions, any functions relating to the matters referred, other than powers of raising a rate or borrowing money. [140]

(5) Where, without functions of an authority or committee being delegated under this section, matters to which the functions relate are referred thereunder to a committee or sub-committee, the authority or committee shall unless in their opinion the case is urgent receive and consider the report of the committee or sub-committee with respect to the matters referred to them. [141]

(6) Any committee or sub-committee constituted under this section shall consist of members of the constituting authority or committee together with such less number of other persons, if any, as may be determined under the next following subsection. [142]

(7) Subject to the provisions of the last foregoing subsection, the constitution of such committees and sub-committees shall be determined in accordance with arrangements made by the smallholdings authority and approved by the Minister, and such arrangements shall provide for the attendance on the smallholdings committee, and any sub-committee thereof to which matters relating to smallholdings are referred, of an officer of the Minister appointed for the purpose and for the notification to the officer of meetings of the smallholdings committee and any such sub-committee. [143]

(8) Section fifty of the Small Holdings and Allotments Act, 1908 (which provides for the constitution by the council of a county or county borough of a smallholdings and allotments committee) shall cease to have effect. [144]

*Effect of section.*—This section requires the setting up of smallholdings committees, constituted by the authorities concerned in accordance with sub-ss. (6) and (7) hereof, to which committees all matters relating to the exercise of the authorities' functions as to smallholdings shall stand referred for report and recommendation. Smallholdings committees may themselves in turn constitute sub-committees for the carrying out of their various duties. Smallholdings authorities may delegate their functions as to smallholdings (other than their powers of raising a rate or of borrowing money) to their smallholdings committees or sub-committees. When reference has been made to such committees or sub-committees by authorities which have not so delegated their functions, they shall, unless the case is urgent, receive and consider the report of the committees or sub-committees.

*Council of a county.*—It should be noted that sub-s. (3) applies to county councils and not to smallholdings authorities generally. In the application of the subsection to county borough councils it is subject to the provisions of s. 65 (5), *post*.

*There may be delegated . . . any functions.*—Although authorities may delegate their

functions, the accounts of receipts or payments of money are the accounts of the smallholdings authorities and must be made up and audited accordingly (see s. 60 (2), *ante*).

*An officer of the Minister.*—The provisions as to the attendance of an officer of the Minister at all meetings of the smallholdings committees or sub-committees are intended to facilitate close co-operation between the smallholdings authorities and the Minister.

*The Minister.*—The Minister of Agriculture and Fisheries.

*Definitions.*—For definition of "smallholdings authority," see s. 47, *ante*. For definition of "smallholdings," see s. 66, *post*. As to "agriculture," see s. 109 (3), *post*.

**62. Keeping of lists of smallholdings.**—Every smallholdings authority shall compile and keep, and, if so required at any time by a person authorised by the Minister in that behalf, produce to him,—

- (a) a record of the smallholdings provided by the authority and of the persons in occupation of such of the smallholdings as are let by the authority and the rents at which those smallholdings are let, and of the purchasers of such of the smallholdings as have been sold by the authority; and
- (b) a map or plan showing the size, boundaries and situation of each smallholding provided by the authority. [145]

*Effect of section.*—This section requires a record of smallholdings and a map or plan thereof to be compiled and kept by all smallholdings authorities.

*The Minister.*—The Minister of Agriculture and Fisheries.

*Record.*—Smallholdings authorities are also required, by s. 11 of the Small Holdings and Allotments Act, 1926 (1 Halsbury's Statutes 328), to register their title under the Land Registration Act, 1925, to land purchased for smallholdings. The said s. 11 is applied for the purposes of this Act by s. 67 (1) and Sched. VIII, *post*. The Acts governing the registration of title are now the Land Registration Acts, 1925 and 1936 (15 Halsbury's Statutes 434; 29 Halsbury's Statutes 725).

*Persons in occupation.*—See s. 109 (5), *post*.

*As have been sold.*—Smallholdings authorities may not sell land held for purposes of smallholdings except with the consent of the Minister (see s. 64 (2), *post*). The names of purchasers of smallholdings by way of terminable annuities under the provisions of ss. 5-7 of the Small Holdings and Allotments Act, 1926 (1 Halsbury's Statutes 325), should be included in the record. As to the continuance of the said ss. 5-7, see note to s. 52, *ante*.

*Definitions.*—For definitions of "smallholdings authority," see s. 47, *ante*; and for that of "smallholdings," see s. 66, *post*.

**63. Annual reports of smallholdings authorities and of Minister.**—(1) Every smallholdings authority shall, before such date in each year as the Minister may direct, send to the Minister a report, relating to such matters as the Minister may direct, of the proceedings of the authority during the foregoing financial year. [146]

(2) The Minister shall lay before Parliament a report in respect of each financial year summarizing his proceedings in relation to smallholdings, and the proceedings of smallholdings authorities, for that year, and—

- (a) every report of the Minister under this subsection shall include in particular a statement of the number of smallholdings provided (whether by the Minister or by smallholdings authorities) during the year to which the report relates and the amount of the contributions payable to smallholdings authorities by the Minister in respect of that year and of other expenses incurred by him in respect thereof in connection with smallholdings;
- (b) every third report of the Minister under this subsection shall include an estimate of the liabilities likely to be incurred by him in respect of the payment of contributions to smallholdings authorities. [147]

(3) Section ten of the Small Holding Colonies Act, 1916 (which provides for the presentation to Parliament of an annual report of the proceedings of the Minister under that Act) shall cease to have effect. [148]

*Effect of section.*—Smallholdings authorities are to make annual reports to the Minister, who, in turn, is to report to Parliament.

*The Minister.*—The Minister of Agriculture and Fisheries.

*Payment of contributions.*—For the provisions as to contributions by the Minister to losses incurred by smallholdings authorities, see s. 53, *ante*.

*Small Holding Colonies Act, 1916.*—1 Halsbury's Statutes 283. This Act empowers the



Minister to acquire land for the primary purpose of settling ex-servicemen thereon. Land so acquired and held by the Minister may, presumably, be designated by him as being held for the purposes of smallholdings (see s. 56 (2), *ante*), in which event it will be included in the subject-matter of the annual report made under this section in lieu of s. 10 of the Small Holdings Colonies Act, 1916, which is to cease to have effect. Note that that section is also repealed by s. 110 and Sched. XIII, *post*.

*Definitions.*—For definition of "smallholdings authority," see s. 47, *ante*; and for that of "smallholdings," see s. 66, *post*.

**64. Exercise, in relation to smallholdings, of powers of smallholdings authority to purchase, sell, let, exchange and appropriate land.**—(1) The foregoing provisions of this Part of this Act shall have effect, in relation to the acquisition of land by a smallholdings authority for the purposes of this Part of this Act, in substitution for the provisions of the Local Government Act, 1933 as to the acquisition of land by local authorities. [149]

(2) Except with the approval of the Minister, a smallholdings authority shall not sell, or let otherwise than in accordance with the foregoing provisions of this Part of this Act, any land held by them for the purposes of smallholdings. [150]

(3) Section one hundred and sixty-three of the said Act of 1933 (which confers power on a local authority with the approval of the Minister of Health to appropriate land for any purpose for which the authority are authorised to acquire land), section one hundred and sixty-four of the said Act (which confers on local authorities power to let land, subject to the consent of the Minister of Health in certain cases) and section one hundred and sixty-five thereof (which empowers a local authority with the consent of the Minister of Health to sell any land not required for the purpose for which it was acquired or is being used, and to exchange land for other land) shall, in relation to land held by a smallholdings authority for the purposes of smallholdings, have effect subject to the foregoing provisions of this section, and with the substitution for references to the Minister of Health of references to the Minister. [151]

*Effect of section.*—This section provides that the powers of smallholdings authorities to acquire land for the purposes of this Part of the Act are to be those of s. 48, *ante*, in substitution for the relevant provisions of the Local Government Act, 1933 (26 Halsbury's Statutes 295). Smallholdings authorities may only sell or let land (which is held by them for the purposes of smallholdings) in accordance with the provisions of this Part of the Act, except with the approval of the Minister.

Ss. 163–165 of the Local Government Act, 1933 (26 Halsbury's Statutes 396 *et seq.*), are applied with modifications to land held by smallholdings authorities for the purposes of smallholdings.

*Local Government Act, 1933.*—The general provisions relating to the acquisition of land and dealings with land by local authorities are contained in Part VII of the Local Government Act, 1933 (26 Halsbury's Statutes 391 *et seq.*). By s. 179 of, and Sched. VII to, that Act, however, the Small Holdings and Allotments Acts, 1908 to 1931, were excluded from the application of the said Part VII. Note, however, the provisions of the Acquisition of Land (Authorisation Procedure) Act, 1946, s. 6 and Sched. IV (39 Halsbury's Statutes 60, 69 *et seq.*), in relation to the compulsory purchase of land in cases falling within s. 1 (1) of that Act.

*The Minister.*—The Minister of Agriculture and Fisheries.

**65. Application of Part IV to councils of county boroughs.**—(1) The Minister may, on the application of the council of a county borough, direct that the provisions of this Part of this Act, other than this section, shall apply in relation to the council as they apply in relation to the council of a county, being a smallholdings authority. [152]

(2) The Minister may, whether on the application of the council of the county borough concerned or otherwise, revoke any direction for the time being in force under this section. [153]

(3) Where no direction under this section is in force in relation to the council of any county borough, but land is held by the council for the purposes of smallholdings (whether in consequence of a previous direction under this section or of the exercise of powers conferred by the Small Holdings and Allotments Acts, 1908 to 1931), then subject to the provisions of the next following subsection the provisions of this Part of this Act, other than this

section, shall as respects that land apply in relation to the council as they apply in relation to the council of a county, being a smallholdings authority.

[154]

(4) Where the said provisions of this Part of this Act apply by virtue of the last foregoing subsection, then—

- (a) so much of the said provisions as imposes a duty to provide smallholdings shall apply as if it conferred a power so to do;
- (b) the council shall not have power to acquire or appropriate land for the purposes of smallholdings, whether by virtue of the said provisions or otherwise :

Provided that as respects land held by the council for smallholdings purposes by virtue of the grant of a tenancy or the compulsory hiring of the land, nothing in paragraph (b) of this subsection shall prevent the extension or renewal of the tenancy or the compulsory purchase of the land. [155]

(5) Where by virtue of this section the provisions of section sixty-one of this Act apply to the council of a county borough—

- (a) nothing in subsection (3) of that section shall prevent the council referring thereunder to the smallholdings committee any matters relating to the exercise of the council's functions in connection with allotments, so however that those matters shall not be referred to the smallholdings committee unless a sub-committee of the smallholdings committee is constituted in accordance with the provisions of section fourteen of the Allotments Act, 1922, and the matters are referred by the smallholdings committee to that sub-committee ;
- (b) reference of the said matters to the smallholdings committee under the said section sixty-one shall be sufficient compliance with the requirements of the said section fourteen as to reference to an allotments committee. [156]

*Effect of section.*—This section enables county borough councils to apply to the Minister to become smallholdings authorities, and on such application the Minister may direct accordingly. When such councils hold land for the purposes of smallholdings and no directions are in force under this section, the councils have all the powers and duties of smallholdings authorities under this Part of the Act except (a) the duty to provide smallholdings under s. 47, *ante*, and (b) the power to acquire or appropriate land under ss. 48, 64, *ante*. In such a case s. 47 applies as if it contained a power and not a duty to provide smallholdings.

*The Minister.*—The Minister of Agriculture and Fisheries.

*Allotments Act, 1922, s. 14.*—This section requires borough councils which have a population of 10,000 or upwards, or which provide more than 400 allotments, to establish allotments committees (1 Halsbury's Statutes 312).

*Definitions.*—For definition of "smallholdings authority," see s. 47, *ante*; and for that of "smallholdings," see s. 66, *post*.

**66. Definition of "smallholding."**—(1) The expression "smallholding" in this Part of this Act means a holding (other than a holding provided, or such as apart from this Act could be provided, under any enactment relating to the provision of cottage holdings) used or intended to be used for agriculture, being either a holding of which the area exceeds one acre and does not exceed fifty acres or a holding of which the area exceeds fifty acres but does not exceed seventy-five acres and the annual full fair rent (as defined in subsection (2) of section fifty-two of this Act) does not exceed one hundred and fifty pounds. [157]

(2) In relation to holdings provided otherwise than under this Part of this Act the said expression includes any holding (other than as aforesaid) falling within the meaning assigned to the said expression by the Small Holdings and Allotments Acts, 1908 to 1931. [158]

*Effect of section.*—This section gives a new definition of smallholdings, as provided under this Part of the Act. A "small holding" under the Small Holdings and Allotments Acts, 1908 to 1931 (see note to s. 49), was defined as "an agricultural holding which exceeds one acre and either does not exceed fifty acres, or, if exceeding fifty acres, is at the date of sale or letting of an annual value for the purposes of income tax not exceeding one hundred



pounds" (see s. 61 of the Small Holdings and Allotments Act, 1908, as amended by the Small Holdings and Allotments Act, 1926, s. 16; 1 Halsbury's Statutes 278). The main differences between this definition and the new definition are, first, that there is now a fixed upper limit to the size of a smallholding, *i.e.*, 75 acres, whereas previously the size was governed by the value of the land; and, secondly, that the fixed upper limit in value is raised from £100 to £150 a year. Both alterations are designed to prevent the creation of smallholdings consisting of large areas of unsuitable land.

*Cottage holdings.*—See s. 12 of the Agricultural Land (Utilisation) Act, 1931 (24 Halsbury's Statutes 58).

*Definition.*—For definition of "agriculture," see s. 109 (3), *post*.

**67. Application and repeal of provisions of Small Holdings and Allotments Acts, 1908 to 1931.**—(1) The provisions of the Small Holdings and Allotments Acts, 1908 to 1931, specified in the first column of Part I of the Eighth Schedule to this Act (which relate to the matters specified in the second column of the said Part I) shall with the necessary modifications apply for the purposes of this Part of this Act. [159]

(2) Subject to the foregoing provisions of this Part of this Act, the said Acts, other than the provisions thereof specified in the said Part I, are hereby repealed in so far as they relate to smallholdings:

Provided that—

(a) without prejudice to subsection (2) of section thirty-eight of the Interpretation Act, 1889 (which relates to the effect of repeals), the provisions of the said Acts specified in the first column of Part II of the Eighth Schedule to this Act, which relate to the matters specified in that column, shall continue in operation to the extent specified in the second column of the said Part II, but subject to any modification so specified;

(b) nothing in this subsection shall affect the provisions of the said Acts relating to the acquisition, and to proceedings in relation to the acquisition, of land for the purposes of small holdings as those provisions apply, by virtue of section seventeen of the Land Settlement (Facilities) Act, 1919, to the acquisition of land by county councils for allotments. [160]

*Effect of section.*—The effect of this section is to render it unnecessary, after this Part of the Act comes into operation, when dealing with smallholdings to make reference to any previous enactment relating to smallholdings with the exception of such sections of the previous Acts specified in Sched. VIII, Part I, *post*, as being applied for the purposes of this Act, or, in Part II thereof, as being saved, in modified form, from repeal.

Note that the definition of "smallholding" in s. 66, *ante*, excludes a "cottage holding." Consequently, the provisions of the Small Holdings and Allotments Acts, 1908 to 1931, as applied to cottage holdings by s. 12 of the Agricultural Land (Utilisation) Act, 1931 (24 Halsbury's Statutes 58), are unaffected.

*Interpretation Act, 1889, s. 38 (2).*—18 Halsbury's Statutes 1005.

*Land Settlement (Facilities) Act, 1919, s. 17.*—1 Halsbury's Statutes 293. This section empowers county councils to acquire land for leasing to parish councils for the provision of allotments and applies to such acquisition the provisions of the Small Holdings and Allotments Act, 1908, as to the acquisition of land by county councils for the provision of small holdings.

## PART V.

### ADMINISTRATIVE AND GENERAL

\* \* \* \*

#### *Supplementary*

\* \* \* \*

**109. Interpretation.**—(1) In this Act the expression "agricultural land" means land used for agriculture which is so used for the purposes of a trade or business, or which is designated by the Minister for the purposes of this subsection, and includes any land so designated as land which in the opinion of the Minister ought to be brought into use for agriculture:

Provided that no designation under this subsection shall extend—

- (a) to land used as pleasure grounds, private gardens or allotment gardens, or
- (b) to land kept or preserved mainly or exclusively for the purposes of sport or recreation, except where the Minister is satisfied that its use for agriculture would not be inconsistent with its use for the said purposes and it is so stated in the designation. [161]

(2) In this Act the expression “agricultural unit” means land which is occupied as a unit for agricultural purposes, including—

- (a) any dwelling-house or other building occupied by the same person for the purpose of farming the land, and
- (b) any other land falling within the definition in this Act of the expression “agricultural land” which is in the occupation of the same person, being land as to which the Minister is satisfied that having regard to the character and situation thereof and other relevant circumstances it ought in the interests of full and efficient production to be farmed in conjunction with the agricultural unit, and directs accordingly :

Provided that the Minister shall not give a direction under this subsection as respects any land unless it is for the time being not in use for any purpose which appears to him to be substantial having regard to the use to which it might be put for agriculture. [162]

(3) In this Act the following expressions have the meanings hereby respectively assigned to them, that is to say :—

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and “agricultural” shall be construed accordingly ;

“allotment garden” means an allotment not exceeding forty poles in extent which is wholly or mainly cultivated by the occupier for the production of vegetables or fruit for consumption by himself or his family ;

“fixed equipment” includes any building or structure affixed to land and any works on, in, over or under land, and also includes anything grown on land for a purpose other than use after severance from the land, consumption of the thing grown or of produce thereof, or amenity, and references to fixed equipment on land shall be construed accordingly ;

“functions” includes powers and duties ;

“livestock” includes any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land ;

“pasture” includes meadow ;

“prescribed” has the meaning assigned to it by the last foregoing section ;

“produce” includes anything (whether live or dead) produced in the course of agriculture ;

“relevant circumstances”, in relation to an owner or occupier, includes all circumstances affecting management or farming other than the personal circumstances of the owner or occupier. [163]

(4) References in this Act to any enactment shall be construed, except where the context otherwise requires, as references to that enactment as amended by or under any other enactment, including this Act. [164]

(5) References in this Act to the farming of land include references to

the carrying on in relation to the land of any agricultural activity; and in relation to any agricultural activity the person having the right to carry it on shall be deemed to be the occupier of the land. [165]

(6) References in this Act to the use of land for agriculture include, in relation to land forming part of an agricultural unit, references to any use of the land in connection with the farming of the unit. [166]

*General note.*—For present purposes the most important definitions in this section are those of "agriculture," "agricultural" (as in "agricultural experience") and "fixed equipment."

**110. Repeals.**—The enactments specified in the Thirteenth Schedule to this Act are, save as provided in Part III of this Act, hereby repealed to the extent specified in the third column of that Schedule. [167]

*Part III of this Act.*—This Part of the Act, which deals with agricultural holdings in general, is outside the scope of this volume.

**111. Short title, commencement and extent.**—(1) This Act may be cited as the Agriculture Act, 1947. [168]

(2) This Act shall come into operation on such date as His Majesty may by Order in Council appoint; and an Order under this subsection may appoint different dates in relation to different provisions of this Act. [169]

(3) This Act, except in so far as is expressly provided therein, shall not extend to Scotland or Northern Ireland. [170]

*Dates of operation.*—The Act is to come into operation on a date or dates to be appointed by Order in Council.

Up to the time of going to press only the provisions referred to in the Agriculture Act, 1947 (Commencement) Order, 1947 (S. R. & O., 1947, No. 1767; see title AGRICULTURE, *ante*), had been brought into operation.

## SCHEDULES

\* \* \* \* \*

### Section 67

### EIGHTH SCHEDULE

#### PROVISIONS OF SMALL HOLDINGS AND ALLOTMENTS ACTS APPLIED OR SAVED

#### PART I

#### PROVISIONS APPLIED

<i>Provision applied</i>	<i>Subject to which provision relates</i>
In the Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36)	
In section thirty-nine,— subsection (4) .. .. .	Power to continue or create easements over land acquired.
In section forty,— subsection (1), in so far as it confers wider powers of leasing than are conferred by the Settled Land Act, 1925, or that Act as applied by any other enactment .. .. .	Power of limited owner to grant leases.
subsections (2) and (3) .. .. .	Leases of Crown Lands and ecclesiastical lands.
Section forty-eight .. .. .	Provisions as to glebe lands.
In the Land Settlement (Facilities) Act, 1919 (9 & 10 Geo. 5, c. 59)	
Section eight .. .. .	Authorisation of sale of glebe land without consent of patron.
In the Small Holdings and Allotments Act, 1926 (16 & 17 Geo. 5, c. 52)	
Section eleven .. .. .	Registration of title to land purchased for smallholdings. [171]

*Small Holdings and Allotments Act, 1908, ss. 39 (4), 40, 48.*—1 Halsbury's Statutes 266, 268, 272.

*Land Settlement (Facilities) Act, 1919, s. 8.*—1 Halsbury's Statutes 290.

*Small Holdings and Allotments Act, 1926, s. 11.*—1 Halsbury's Statutes 328.

PART II  
PROVISIONS SAVED

*Enactment saved*

*Extent of saving*

In the Smallholdings and Allotments Act, 1926 (16 & 17 Geo. 5, c. 52) :—

Section two (power of Minister to contribute towards losses).

Sections five to seven (provisions as to payment for sales of holdings by terminable annuities, as to conditions binding on holdings sold or let, and as to recovery of possession where condition broken).

Sections thirteen and fourteen (provisions as to loans for purchase and equipment of holdings).

The section shall continue in operation in relation to proposals submitted before the commencement of Part IV of this Act, but subject to the application, with such modifications as may be prescribed, of the regulations made under paragraph (b) of subsection (7) of section fifty-eight of this Act.

(1) The sections shall, subject to the modification hereinafter provided, continue in operation in relation to smallholdings sold or let before the commencement of Part IV of this Act, and except in so far as they provide for the sale of smallholdings or any other disposition thereof not authorised by Part IV of this Act, and except in so far as subsection (1) of section six renders the consent of the Minister unnecessary where no contribution is payable by him.

(2) The requirement in paragraph (c) of subsection (1) of section six that the holding shall be cultivated in accordance with the rules of good husbandry as defined in the Agricultural Holdings Act, 1923, shall be construed as a requirement that the owner or occupier, as the case may be, shall fulfil his responsibilities to farm the holding in accordance with the rules of good husbandry, and section eleven of this Act shall apply accordingly.

The sections shall continue in operation in relation to loans made before the commencement of Part IV of this Act. [172]

*Small Holdings and Allotments Act, 1926, ss. 2, 5-7, 13, 14.*—1 Halsbury's Statutes 323, 325 *et seq.*, 329, 330. In the title of this Act "Smallholdings" appears as one word in this Part of Sched. VIII to the King's Printer's copy of the present Act.

*Agricultural Holdings Act, 1923.*—1 Halsbury's Statutes 80. As to the rules of good husbandry as defined by that Act, see s. 57 (1) thereof (1 Halsbury's Statutes 114). Note that, by s. 110 of, and Sched. XIII to, the present Act, this particular part of the said s. 57 (1) is repealed. The rules of good husbandry are now defined in s. 11 of the Agriculture Act, 1947, for which see title AGRICULTURE, *ante*, where the said repeal also appears.

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Section 110

THIRTEENTH SCHEDULE  
ENACTMENTS REPEALED

Session and Chapter	Short Title	Extent of Repeal
8 Ed. 7, c. 36.	The Small Holdings and Allotments Act, 1908.	Section fifty.
6 & 7 Geo. 5, c. 38.	The Small Holding Colonies Act, 1916.	Section ten.
*	*	*
9 & 10 Geo. 5, c. 91.	The Ministry of Agriculture and Fisheries Act, 1919.	Sections two to ten; in section eleven, in subsection (2) the words from "and Parts II" to the end; the Schedules. [173]
*	*	*

*The Small Holdings and Allotments Act, 1908, s. 50.*—1 Halsbury's Statutes 273. The effect of this section was to compel every county council to establish a small holdings and allotments committee, but by the Ministry of Agriculture and Fisheries Act, 1919, ss. 7, 8 (3 Halsbury's Statutes 453, 454), sub-committees of the county agricultural committees were substituted. The Small Holdings and Allotments Act, 1926, s. 21 (1 Halsbury's Statutes 333) excluded the London County Council from the section.

*Small Holding Colonies Act, 1916, s. 10.*—1 Halsbury's Statutes 286.

*Ministry of Agriculture and Fisheries Act, 1919, ss. 2-11 and Schedules.*—3 Halsbury's Statutes 452 *et seq.*, 455, 456 *et seq.*; see *supra*.

*Operation.*—As to the effective date for operation of these repeals, see s. 111 (2), *ante*, and note thereto.

## ORDERS, CIRCULARS AND MEMORANDA

### ORDER MADE BY THE TREASURY PRESCRIBING SECURITIES UNDER S. 9 OF THE LAND SETTLEMENT (FACILITIES) ACT, 1919

*S. R. & O., 1947, No. 790*

*April 28, 1947*

Whereas by section 9 of the Land Settlement (Facilities) Act, 1919, it is provided that a County Council may on giving one month's notice redeem a perpetual annuity created by them in payment for land acquired under the Small Holdings and Allotments Act, 1908, and that in default of agreement the consideration for such redemption shall be such a sum as would, according to the average price, at the date of the expiration of the notice, of such Government securities as may for the time being be prescribed by the Treasury, yield annual dividends equal to the amount of the annuity.

Now therefore We, the Lords Commissioners of His Majesty's Treasury, do hereby prescribe the following securities (in substitution for the securities prescribed by the Order dated the 22nd day of March, 1934) as the securities to be taken into account for the purposes of the said section on and after the date of this Order:—

2½ per cent. Consolidated Stock 1923 or after

2½ per cent. Treasury Stock 1975 or after. [174]

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## AREAS OF LOCAL GOVERNMENT

CASES:—

Newport Borough Council v. Monmouthshire County Council, Monmouthshire County Council v. Newport Borough Council, [1947] 1 All E. R. 900	PAGE 50
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### CASES

*Local government—Alteration of area—Extension of county borough to include part of county area—Financial adjustments—Increased burden on county ratepayers—Method of assessing compensation—Arbitrator's duty—Interest on amount payable—Local Government Act, 1933 (c. 51), s. 152 (1) (b), Sched. V, r. 1—Newport Extension Act, 1934 (c. lvii), s. 58.*

By the Newport Extension Act, 1934, the boundary between the borough of Newport and the administrative county of Monmouth was altered by transferring to the former a piece of adjoining territory formerly included within the area of the latter. This necessitated certain adjustments between the two authorities, which, so far as not agreed, were to be determined by an arbitrator. One of the matters not agreed was that mentioned in s. 152 (1) (b) of the Local Government Act, 1933, *viz.*, provision for payment to the county council of such sum as seemed equitable in accordance with the

rules contained in Sched. V to the Act of 1933 in respect of any increase of burden which would properly be thrown on the ratepayers of that council in meeting the cost incurred in discharge of any of its functions. Rule 1 provides: "Regard shall be had to—(a) the difference between the burden on the ratepayers which will properly be incurred by the local authority in meeting the cost of executing any of their functions and the burden on the ratepayers which would properly have been incurred by the local authority in meeting such cost had no alteration of boundaries or other change taken place; (b) the length of time during which the increase of burden may be expected to continue: Provided that no alteration of income in consequence of an apportionment under the regulations made under s. 108 (1) (b) of the Local Government Act, 1929, shall be taken into account." The question for determination in the first appeal was: whether the cost incurred by the county council in the discharge of its functions was to be arrived at by taking into account the whole amount of the General Exchequer Grant to the unreduced county as it existed immediately before the transfer (as the borough council contended), or by taking the proportion of such General Exchequer Grant as bore the same relation to the whole as the rateable value of the reduced county bore to the rateable value of the unreduced county in the year preceding the change (as the county council contended), or such other proportion as the arbitrator, having regard to all the circumstances of the case and in his discretion, thought equitable. The question in the second appeal was whether the arbitrator had power to award interest on any sum awarded to the county council in respect of the whole or part of the period between the appointed day on which the transfer was to take effect and the date of his award:—

*Held*: (i) (Lord WRIGHT and Lord SIMONDS *dissenting*): the arbitrator's duty was to fix such sum as seemed to him equitable having regard to the circumstances and the considerations indicated in the rules, but disregarding any alteration of income due to an apportionment referred to in the proviso to r. 1.

(ii) as regards the adjustment for increase of burden the arbitrator's mandate in s. 152 (1) (b) of the Act of 1933 did not extend to authorise him to measure and award what it would be equitable to add for delay in payment, nor was he authorised to add interest for delay in respect of other items in the claim.

*Decisions of the COURT OF APPEAL*, [1946] 2 All E. R. 313, *affirmed*.—NEWPORT BOROUGH COUNCIL *v.* MONMOUTHSHIRE COUNTY COUNCIL, MONMOUTHSHIRE COUNTY COUNCIL *v.* NEWPORT BOROUGH COUNCIL, [1947] 1 All E. R. 900; [1947] L. J. R. 913, 929; 177 L. T. 77; 111 J. P. 402, 420; 63 T. L. R. 365; 91 Sol. Jo. 354; 45 L. G. R. 421, 436, H. L. [175]

## BETTING

STATUTES:—

Dog Racecourse Betting (Temporary Provisions) Act, 1947

PAGE

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## STATUTES

### DOG RACECOURSE BETTING (TEMPORARY PROVISIONS) ACT, 1947

(10 & 11 Geo. 6, c. 20)

### PRELIMINARY NOTE

This Act, which received the Royal Assent and came into force on March 27, 1947, is designed temporarily to confine the holding of dog racecourse betting to Saturdays and Bank Holidays.

A prime essential at the present time is to increase industrial production, and in this connection it is important to reduce absenteeism as far as possible. It has been recognised that the holding of weekday sporting events during normal working hours is conducive to absenteeism, and the Government accordingly approached the national bodies controlling the various sports and recreations of the country—horse racing, football, greyhound racing, etc.—and requested them to secure the required curtailment of midweek sporting events. In the case of all sports other than greyhound racing, the national controlling body was able to comply with the Government's wish, but the greyhound racing authorities, though willing to do so, were unable to comply since they were bound by the restrictions placed on betting at dog racecourses by the Betting and Lotteries Act, 1934 (27 Halsbury's Statutes 273). The purpose of the present Act is temporarily to amend the Act of 1934 in order to enable dog racing authorities to comply with the Government's wish.

S. 1 of that Act restricts betting either by way of bookmaking or by means of a totalisator on any track to 104 days in any year, which may not include Good Friday, Christmas Day or Sundays. S. 4 (1) provides further that such betting may not take place on any day on a track being a dog racecourse in connection with more than eight dog races and on any day on such a track except during one continuous period not exceeding four hours. By a proviso to s. 4 (1), however, it is laid down that in relation to the four special appointed days fixed in any year by the licensing authority (see *infra*) these provisions are to have effect with the substitution for the word "eight" of the word "sixteen" and for the words "one continuous period not exceeding four hours," the words "a period or periods not exceeding eight hours in the aggregate." If, therefore, each four-hour betting period is regarded as a single race-meeting, there are 108 race meetings a year, 100 of them being single meetings and four being double meetings. The licensing authorities are the county councils and the county borough councils (s. 5). They have the duty of fixing the 104 appointed days on which betting facilities may be provided on licensed tracks within their area (s. 10), four of which days they are to fix as the special appointed days (s. 4 (3)), and all of which days are to be the same days for the whole of the licensing area. In England and Wales the four special appointed days are normally the Bank Holidays; the 104 days usually appointed in any year are the 52 Saturdays, the 4 Bank Holidays, and 48 mid-week days. Since under the 1934 Act there have to be 104 appointed days, it follows that at least 48 of these days have to be mid-week days which are not also Bank Holidays but are ordinary working days.

S. 1 of the present Act temporarily restricts betting at dog racecourse meetings to Saturdays and Bank Holidays, thus giving a total of 56 days in a year on which betting may take place, as against 104 days under the 1934 Act. There are still, however, to be 108 meetings in a year, and this is made possible by allowing double meetings, namely, meetings of 16 races and for periods not exceeding 8 hours, to be held on these days, with a proviso that in a Bank Holiday week there is to be only one double meeting, which may be held either on the Bank Holiday, or on the following Saturday, at the option of the track proprietors. For the purpose of arriving at the total of 104 days allowed by s. 1 (1) of the Act of 1934 (27 Halsbury's Statutes 273) for betting, a day on which extended betting is allowed is to count as two days, except in the case of a Bank Holiday or of a Saturday following a Bank Holiday where extended betting did not take place on the Bank Holiday.

The net result of these amending provisions is, therefore, that in place of the 100 single meetings (held in the mid-week and on Saturdays) and the 4 double meetings (held on Bank Holidays) allowed by the Act of 1934, there are to be, for the duration of the present Act, 52 double and 4 single meetings, confined to Saturdays and Bank Holidays.

There is a further provision, contained in s. 2 of the Act, that betting is not to take place on Saturdays before 1 p.m., the object being, of course, to prevent either absenteeism from, or early leaving of, work on Saturday mornings. There is naturally no such restriction on betting times on a Bank Holiday.

The Act is to expire on June 30, 1948, though provision may be made by Order in Council for its expiry, or for the expiry of any provisions thereof, before that date; and, in addition, the Secretary of State may relax its operation in particular localities if satisfied that such relaxation is unlikely to lead to any substantial interference with industrial production (s. 4). This latter provision is designed to benefit areas which are chiefly or exclusively holiday areas. [176]



## ARRANGEMENT OF SECTIONS

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*An Act to make temporary provision for limiting betting on licensed dog racecourses to Saturdays and certain other days, for varying for those days the restrictions on the number of races on which and the time during which such betting may take place, and for purposes connected therewith.* [177]

[27th March, 1947.]

**1. Temporary limitation of dog racecourse betting to Saturdays and certain other days, and variation of restrictions for those days.**—(1) During the continuance in force of this Act the Betting and Lotteries Act, 1934 (in this Act referred to as “the principal Act”), so far as it relates to betting, whether by way of bookmaking or by means of a totalisator, on licensed tracks being dog racecourses, shall have effect as if every Saturday and Bank Holiday, and no other days, had been fixed by every licensing authority as the days on which betting facilities may be provided on licensed tracks within their licensing area, and those days, and no other days, shall accordingly be appointed days for the purposes of the said Act so far as it relates to such betting. [178]

(2) During the continuance in force of this Act subsection (1) of section four of the principal Act (which provides that betting by way of bookmaking or by means of a totalisator shall not take place on any day on a track being a dog racecourse in connection with more than eight dog races, and that betting by way of bookmaking or by means of a totalisator on the results of dog races shall not take place on any day on such a track except during one continuous period not exceeding four hours, but subject to a proviso relaxing those restrictions in relation to the special appointed days therein mentioned) shall have effect as respects licensed tracks subject to the following modifications, that is to say,—

(a) there shall be substituted therein, for the word “eight” where it first occurs, the word “sixteen”, and, for the words “one continuous period not exceeding four hours” where they first occur, the words “a period or periods not exceeding eight hours in the aggregate”; and

(b) the proviso shall not have effect:

Provided that paragraph (a) of this subsection shall not apply as respects such betting as is mentioned in the said subsection (1) on any licensed track on the Saturday next following a Bank Holiday if such betting has taken place thereon on the Bank Holiday in connection with more than eight dog races or during more than one continuous period or during one continuous period exceeding four hours. [179]

(3) For the purposes of the application to any licensed track being a dog racecourse of paragraph (a) of subsection (1) of section one of the principal Act (which provides that betting by way of bookmaking or by means of a totalisator shall not take place on any track on more than one hundred and four days in any year), a day on which such betting on the track takes place in connection with more than eight dog races, or during more than one continuous period or during one continuous period exceeding four hours, shall be reckoned as two days:



Provided that this subsection shall not apply—

(a) to a Bank Holiday ; or

(b) to the Saturday next following a Bank Holiday, in a case in which such betting did not take place as aforesaid on the track on the Bank Holiday. [180]

(4) Licensing authorities shall during the continuance in force of this Act observe the provisions of section ten of the principal Act (which relates to the fixing of appointed days), and of subsection (3) of section four thereof (which relates to the fixing of special appointed days) notwithstanding the preceding provisions of this section. [181]

*Continuance in force of this Act.*—See s. 4, *infra*.

*Betting and Lotteries Act, 1934.*—For ss. 1, 4 and 10 thereof, see 27 Halsbury's Statutes 273, 274, 281.

*Sub-s. (4).*—The provision made by this subsection is necessary since this Act or provisions thereof may be repealed or rendered inapplicable as respects tracks in a particular area by an Order in Council or an order of the Secretary of State under s. 4, *infra*.

*Bank Holiday.*—As to Bank Holidays, see s. 5 (3), *post*, and note thereto.

*Appointed days and special appointed days.*—The appointed days are the days, 104 in number, which a licensing authority is to fix, in a year beginning on July 1, as the days on which betting facilities may be provided on licensed tracks in their area. These days are to be the same for the whole of a licensing area, and are not to include Good Friday, Christmas Day or Sunday (Betting and Lotteries Act, 1934, s. 10 ; 27 Halsbury's Statutes 281). The licensing authority, when fixing these days, is also to fix four of them (which four days are to be the same for the whole area) as special appointed days (Betting and Lotteries Act, 1934, s. 4 (3)). See s. 5 (2), *post*, and note : "Construed as one" ; also the Preliminary Note, *ante*.

*Definitions.*—For definitions of "bookmaking," "totalisator," "licensed track," "dog race," "licensing authority," "licensing area" and "track," see note to s. 5 (2), *post*.

**2. Temporary limitation of dog racecourse betting on Saturdays to after 1.0 p.m.**—(1) During the continuance in force of this Act betting by way of bookmaking or by means of a totalisator on a licensed track being a dog racecourse shall not take place before the hour of one in the afternoon on any day other than a Bank Holiday. [182]

(2) If bookmaking is carried on or a totalisator is operated by any person on any track in contravention of this section, that person, and, if he is not the occupier of the track, the occupier also, shall be guilty of an offence :

Provided that, where the occupier of a track is charged with an offence by reason of a contravention of this section on the part of another person, it shall be a defence for him to prove that the contravention occurred without his knowledge. [183]

*Continuance in force of this Act.*—See s. 4, *infra*.

*Application of sub-s. (1).*—The Secretary of State has power in certain circumstances to make an order directing that this subsection shall not apply to tracks in a particular licensing area or part of an area or that in its application it shall have effect with the substitution of a reference to an earlier hour for the reference to 1 p.m. (see s. 4 (3) (b), *post*).

*Offences.*—The present Act is to be construed as one with the Betting and Lotteries Act, 1934, as if included in Part I thereof (see s. 5 (2), *post*), and, accordingly, the provisions of s. 30 (2) of that Act (27 Halsbury's Statutes 294) relating to penalties for offences under certain sections of that Act are applicable to an offence under sub-s. (2), *supra*. Under the said s. 30 (2) an offender is liable—(a) on summary conviction, to a fine not exceeding £50, and in the case of a second or any subsequent conviction for an offence under the same section, to a maximum of two months' imprisonment and/or a fine not exceeding £100 ; or (b) on conviction on indictment, to a fine not exceeding £300, and in the case of a second or any subsequent conviction for an offence under the same section, to a maximum of six months' imprisonment and/or a fine not exceeding £500. It is provided by s. 29 of the Act of 1934 that where a body corporate is convicted of an offence under that Act every person who at the date of the commission of the offence was a director or officer of the body corporate is to be deemed to be guilty of the offence unless he proves that it was committed without his knowledge.

*Definitions.*—For definitions of "bookmaking," "dog racecourse," "totalisator" and "track," see note to s. 5 (2), *post*.

*Bank Holiday.*—As to Bank Holidays, see s. 5 (3), *post*, and note thereto.

**3. Application to Scotland.** [184]

**4. Expiry of this Act, and power to relax its operation in particular localities.**—(1) Subject to the provisions of this section, this Act shall continue

in force until the thirtieth day of June, nineteen hundred and forty-eight, and shall expire at the end of that day. [185]

(2) His Majesty may by Order in Council declare that it is no longer necessary that this Act, or any provision thereof specified in the Order, should continue in force, and, if an Order under this subsection is made, this Act, or the specified provision, as the case may be, shall expire at the end of such day as may be specified in the Order. [186]

(3) If the Secretary of State is satisfied as respects any particular licensing area or part of such an area that, having regard to its situation or to other local circumstances, the making of an order under this subsection in relation thereto is unlikely to lead to any substantial interference with industrial production, he may by order direct that, on and after such day as may be specified in the order, either—

(a) this Act shall not apply to tracks in that area or part; or

(b) subsection (1) of section two of this Act shall not apply to tracks in that area or part, or shall, in its application to tracks in that area or part, have effect with the substitution of a reference to an earlier hour for the reference to one in the afternoon;

and any order under this subsection may be revoked, and an order thereunder substituting an earlier hour as aforesaid may be varied, by a subsequent order made by the Secretary of State. [187]

(4) The expiry of this Act, or the revocation of an order under the last preceding subsection, shall not affect the operation thereof as respects things previously done or omitted to be done, and, in reckoning the number of days on which betting by way of bookmaking or by means of a totalisator may take place on a track in a part of a year after the expiry of section one of this Act or in a part thereof during which that section does not apply to the track, days in that year on which such betting has taken place during the continuance in force of that section and its application to the track shall be reckoned in accordance with subsection (3) of that section. [188]

*Orders under this section.*—No Order in Council or order of the Secretary of State had been made under this section at the time of going to press.

*Definitions.*—For definitions of “bookmaking,” “licensing area,” “totalisator” and “track,” see s. 5 (2), *post*, and note thereto.

**5. Short title, construction and extent.**—(1) This Act may be cited as the Dog Racecourse Betting (Temporary Provisions) Act, 1947. [189]

(2) This Act shall be construed as one with the principal Act as if included in Part I thereof. [190]

(3) In this Act the expression “Bank Holiday” means each of the days specified as Bank Holidays in England in the Schedule to the Bank Holidays Act, 1871. [191]

(4) This Act shall not extend to Northern Ireland. [192]

*Principal Act.*—The Betting and Lotteries Act, 1934 (27 Halsbury's Statutes 273).

*Bank Holidays Act, 1871, Sched.*—19 Halsbury's Statutes 418. The days specified as Bank Holidays in England in that Schedule are Easter Monday, the Monday in Whitsun week, the first Monday in August and December 26, if a weekday. The Holidays Extension Act, 1875, s. 2 (19 Halsbury's Statutes 419), provides that where December 26 falls on a Sunday, December 27 shall be a holiday under the Act of 1871.

*Construed as one.*—Accordingly this Act is to be construed as if it were contained in Part I of the Betting and Lotteries Act, 1934 (27 Halsbury's Statutes 273), unless there is any manifest discrepancy showing that this Act has modified something to be found in Part I of the earlier Act: *Canada Southern Railway Co. v. International Bridge Co.* (1883), 8 App. Cas. 723, at p. 727; *Hart v. Hudson Brothers, Ltd.*, [1928] 2 K. B. 629, at p. 634; *Phillips v. Parnaby*, [1934] 2 K. B. 299, at p. 302. Thus words defined in Part I of the earlier Act will bear the like meaning in this Act, unless it is clear from the context that their construction in this Act is different. Therefore, the following definitions of words in Part I of the Act of 1934, contained in s. 20 (1) thereof (27 Halsbury's Statutes 287), apply for the purposes of the present Act:—

*Bookmaker.*—This means any person who, whether on his own account or as servant or agent to any other person, carries on, whether occasionally or regularly, the business of receiving or negotiating bets or conducting pari mutual or pool betting operations, or who in any manner holds himself out, or permits himself to be held out in any manner,

as a person who receives or negotiates bets or conducts such operations, and "book-making" is to be construed accordingly. A person is not, however, to be deemed a bookmaker by reason only of the fact that he operates, or is employed in operating, a totalisator, and the operating of a totalisator shall be deemed not to be bookmaking.

*Totalisator.*—This means the contrivance for betting known as the totalisator or *pari mutuel*, or any other machine or instrument of betting of a like nature, whether mechanically operated or not.

*Licensed track.*—This means a track in respect of which a licence is for the time being in force.

*Dog race.*—This means a race in which an object propelled by mechanical means is pursued by dogs, and "dog racecourse" is to be construed accordingly.

*Licensing authority.*—This means a council or committee having power to grant licences, namely, as provided by s. 5 (1) of the Act of 1934 (27 Halsbury's Statutes 275), the council of an administrative county and the council of a county borough in relation to their respective areas, and any committee to whom any such council may delegate their functions. In relation to a track or proposed track the expression means the licensing authority having jurisdiction in the licensing area in which the track or proposed track is, or will be, situate.

*Licensing area.*—This means the area over which a licensing authority has jurisdiction.

*Track.*—This means premises on which races of any description, athletic sports or other sporting events take place.

## BUILDING

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### ORDERS, CIRCULARS AND MEMORANDA

#### CONTROL OF BUILDING OPERATIONS (NO. 8) ORDER, 1947

*S. R. & O., 1947, No. 74*

*January 15, 1947*

This order has been revoked by the Control of Building Operations (No. 9) Order, 1947, *post*. It specified for the period from February 1, 1947, to July 31, 1947, the same limits of costs for building operations as are specified by the latter order for the period from August 1, 1947, to January 31, 1948. Otherwise the terms of the two orders are identical.

The previous exception in respect of materials used on private dwellings by unpaid labour was discontinued by the present order. [193]

#### CONTROL OF BUILDING OPERATIONS (PROCEEDINGS BY LOCAL AUTHORITIES) (NO. 1) ORDER, 1947

*S. R. & O., 1947, No. 75*

*January 15, 1947*

The Minister of Works in exercise of the powers conferred on him by Regulations 56A and 93 of the Defence (General) Regulations, 1939, as having effect by virtue of the Supplies and Services (Transitional Powers) Act, 1945, and of all other powers enabling him in that behalf, hereby orders as follows :—

1. The Common Council of the City of London and the Councils of county boroughs, metropolitan boroughs and county districts in England and Wales, acting by any officer appointed by them either generally or specifically for this purpose, are hereby specified as authorities who may institute proceedings for an offence against Regulation 56A of the Defence (General) Regulations, 1939. [194]

2. This Order may be cited as the Control of Building Operations (Proceedings by Local Authorities) (No. 1) Order, 1947, and shall come into force on the first day of February, 1947. [195]

\* \* \* \* \*

### EXPLANATORY NOTE

*(This Note is not part of the Order, but is intended to indicate its general purport.)*

*The purpose of this Order is to enable certain local authorities in England and Wales to institute proceedings against persons contravening the Civil Building Control.*

## CONTROL OF BUILDING OPERATIONS (NO. 9) ORDER, 1947

S. R. & O., 1947, No. 1439

July 8, 1947

The Minister of Works in exercise of the powers conferred on him by Regulation 56A of the Defence (General) Regulations, 1939, as having effect by virtue of the Supplies and Services (Transitional Powers) Act, 1945, and of all other powers enabling him in that behalf, hereby orders as follows :—

1. The sum prescribed under paragraph (c) of the proviso to paragraph (1) of Regulation 56A of the Defence (General) Regulations, 1939, is the sum of ten pounds. [196]

2.—(1) Any person may, without a licence from the Minister of Works under paragraph (2) of the said Regulation 56A, carry out on any single property, during any month in the period beginning with the first day of August, nineteen hundred and forty-seven, and ending with the thirty-first day of January, nineteen hundred and forty-eight, any work to which this Article applies, if the cost of the work, together with the cost of any other such work previously carried out on that property during that month without such a licence as aforesaid, does not exceed the sum of two pounds.

(2) In addition to the work authorised by the foregoing paragraph of this Article, any person may, without such a licence as aforesaid, carry out on any single property during the said period any work to which this Article applies, if the cost of the work, together with the cost of any other such work previously carried out on that property during that period without such a licence as aforesaid (not being work authorised by the foregoing paragraph) does not exceed the sum of ten pounds.

(3) In this Article, the expression "month" means the month of August, September, October, November, December or January. [197]

3.—(1) Article 2 of this order applies to any work specified in Part III of the Sixth Schedule to the Defence (General) Regulations, 1939, and any maintenance work on a building or on any such works as are mentioned in Part II of that Schedule, except that it does not apply to any work carried out for a purpose specified in the first column of the Table set out in Part I of the said Schedule.

(2) In this order, the expression " a property " means, in relation to any work carried out at any time—

- (a) any property the full value of which was ascertained for the purposes of an assessment under Schedule A in force at that time ; or
- (b) any property which, not being or forming part of a property to which sub-paragraph (a) of this paragraph applies, was at that time the subject of a valuation shown in the Valuation List for the time being in force under the Rating and Valuation Acts, 1925 to 1940, or the Rating and Valuation (Metropolis) Acts, 1869 to 1940, as the case may be ; or
- (c) in a case where the work is carried out on property which is not and does not form part of a property to which sub-paragraph (a) or sub-paragraph (b) of this paragraph applies, the building or site on which the work is carried out, together with any land or building occupied with that building or site :

Provided that, where any building which would constitute a property for the purposes of this order comprises two or more parts which are occupied or constructed for occupation as separate dwellings, each of those parts shall be deemed to be a separate property for the said purposes and the remainder of the building shall also be deemed for the said purposes to be a separate property. [198]

4. The Control of Building Operations (No. 8) Order, 1946, is hereby revoked. [199]

5.—(1) This order may be cited as the Control of Building Operations (No. 9) Order, 1947.

(2) This order shall come into operation on the first day of August, nineteen hundred and forty-seven. [200]

\* \* \* \* \*

### EXPLANATORY NOTE

*(This Note is not part of the Order, but is intended to indicate its general purport.)*

*The purpose of this Order is to retain for a further period of six months (i.e., from 1st August, 1947 to 31st January, 1948) :—*

- A. the limit of £10 which may be incurred on certain building or civil engineering works undertaken by Local Authorities and certain Public Utility Undertakings without authorisation from a Government Department ;*
- B. the " free " allowances within which building or civil engineering work may be carried out without a civil building licence. Work may be done on any single property if its cost together with the cost of any other work done without licence on that property during the period, does not exceed £10. In addition, during any one month work costing not more than £2 may be carried out without a licence. This £2 monthly allowance is non-cumulative.*

## ORDER IN COUNCIL AMENDING REGULATION 56AB OF THE DEFENCE (GENERAL) REGULATIONS, 1939

S. R. & O., 1947, No. 1551

July 25, 1947

His Majesty, in pursuance of section three of the Supplies and Services (Transitional Powers) Act, 1945, and of all other powers enabling Him in

that behalf, is pleased, by and with the advice of His Privy Council to order, and it is hereby ordered, as follows :—

1. For paragraphs (4) and (5) of Regulation fifty-six AB of the Defence (General) Regulations, 1939, there shall be substituted the following paragraphs:—

“(4) Save as provided by the next succeeding paragraph, where an application in that behalf is duly made the Minister shall grant a certificate of registration under this Regulation to the applicant.

(5) The Minister shall have power, if he thinks fit, to refuse an application made by any person for a certificate of registration under this Regulation, or to revoke, or to suspend for a specified period the operation of, such a certificate in force as respects any person, if that person has been convicted of an offence against Regulation 56A of these Regulations and the court before which he was convicted has recommended that the Minister should exercise the powers conferred on him by this Regulation where such a recommendation is made.

A revocation or suspension under this paragraph may be either general or limited to the doing of work in a specified area or on a specified site.” [201]

2. In accordance with the preceding Article, paragraphs (6) and (9) of the said Regulation fifty-six AB are hereby revoked. [202]

\* \* \* \* \*

### EXPLANATORY NOTE

*(This Note is not part of the Order, but is intended to indicate its general purport.)*

*This Order amends Regulation 56AB of the Defence (General) Regulations, 1939, under which builders and civil engineering contractors are required to be registered. The Regulation empowered the Minister of Works to revoke or suspend a certificate of registration if satisfied as to either of the following grounds :—*

- (a) that the person registered was not observing the normal terms as to wages and conditions and hours of employment, or*
- (b) that he had been convicted of a contravention of Regulation 56A (which restricts the carrying out of building without licence) and the court before which he was convicted had recommended that action should be taken under this Regulation.*

*The Minister had power to refuse to register any person if a previous certificate of registration held by the applicant had been revoked on either of the above grounds or if the applicant had been convicted of a contravention of Regulation 56A and the court had made a recommendation that action should be taken under this Regulation.*

*The change made by this Order is that the requirements as to wages and conditions and hours of employment will no longer be enforced under Regulation 56AB, and the only ground for revoking, suspending or refusing to grant a certificate of registration will be conviction for a contravention of Regulation 56A, where the court has made a recommendation that action should be taken under this Regulation. Consequentially on this change there are revoked paragraph (6) of Regulation 56AB (which covered cases coming under the special provisions of the Essential Works (Building and Civil Engineering) Order, 1941, which was withdrawn as from March 31st, 1947), and paragraph (9) of Regulation 56AB (which gave the Minister's officers a power of entry and inspection for the purpose of enforcing the employment provisions of the Regulation).*

## CONTROL OF BUILDING MATERIALS (NO. 1) ORDER, 1947

S. R. & O., 1947, No. 1698

August 7, 1947

The Minister of Works, in exercise of the powers conferred on him by Regulations 55 and 55AA of the Defence (General) Regulations, 1939, as having effect by virtue of the Supplies and Services (Transitional Powers) Act, 1945, and of all other powers enabling him in that behalf, hereby orders as follows :—

1. In this Order—

“ The Minister ” means the Minister of Works ;

“ Scheduled goods ” and “ scheduled materials ” mean any goods or materials of any description specified in the Schedule to this Order ;

“ Priority Certificate ” means any document issued by or on behalf of the Minister in whatever form, authorising, as a matter of priority, the acquisition or supply for any specified purpose of any scheduled goods or materials. [203]

2. No person shall, in acquiring any scheduled goods or materials for the acquisition or supply of which a priority certificate has been issued, acquire or seek to acquire a greater quantity of the scheduled goods or materials than is specified therein, and no person shall for any purpose for which a priority certificate has been issued knowingly supply or offer to supply a greater quantity of any such scheduled goods or materials than aforesaid. [204]

3. A person (in this Article called a “ supplier ”) who in the course of a trade or business has available for supply scheduled goods or materials of any description shall not, so long as any order to supply any scheduled goods or materials of the same description for a purpose for which a priority certificate has been issued remains unfulfilled, supply or offer to supply any scheduled goods or materials of the same description as any goods or materials specified in the priority certificate to any person except for a purpose for which a priority certificate has been issued and for which the goods or materials so specified have not been supplied by him. Provided that, when goods or materials specified in a priority certificate are ordered for delivery at a future date, the supplier may nevertheless supply any goods or materials of the same description in his possession to any person if he has reasonable grounds for expecting that on that future date he will have similar goods or materials in his possession and available and sufficient for the purposes of the priority certificate. Provided also that if the Minister is satisfied that it is the custom of a supplier to distribute any scheduled goods or materials from more than one depot or store the Minister may as respects any class of scheduled goods or materials designate any one or more of such depots or stores for the purpose of this Article and the supplier shall as respects scheduled goods or materials of that class available at each depot or store so designated and so long as the designation remains in force be regarded as a separate supplier for the purposes of this Article. [205]

4. It shall be a defence for a person charged with a contravention of Article 3 of this Order to prove that the scheduled goods or materials were supplied or offered in circumstances of emergency which rendered it impracticable first to obtain a priority certificate for the purpose for which they were supplied or offered. [206]

5. A person carrying on any of the following undertakings, that is to say :—



- (a) an undertaking consisting wholly or partly of the carrying on of any of the activities mentioned in sub-paragraphs (a), (b), (i) and (ii) of paragraph (2) of Regulation 56AB of the Defence (General) Regulations, 1939, and,
- (b) an undertaking consisting wholly or partly of the production, manufacture, processing, adaptation, distribution or sale of any scheduled goods or materials

shall, whenever requested by or on behalf of the Minister, furnish such information relating to sales and purchases and offers for sale or purchase of scheduled goods and materials made in the course of carrying on the undertaking as may be specified in the request. [207]

6.—(1) This Order may be cited as the Control of Building Materials (No. 1) Order, 1947.

(2) The provisions of this Order other than those in Article 3 shall come into force on the 1st day of September, 1947. The provisions of Article 3 shall come into force on the 1st day of October, 1947. [208]

\* \* \* \* \*

### SCHEDULE

Building Bricks, Commons and Facings in quantities of not less than 1,000.

Rainwater gutters of cast iron or asbestos cement.

Rainwater gutter fittings of cast iron or asbestos cement.

Rainwater pipes of cast iron or asbestos cement.

Rainwater pipe fittings of cast iron or asbestos cement.

Soil pipes of cast iron or asbestos cement.

Soil pipe fittings of cast iron or asbestos cement.

Hardwall Plaster.

Plasterboard.

Domestic type baths of cast iron or pressed steel.

Domestic type lavatory basins.

W.C. pans.

Domestic type sinks not of stainless steel.

Lead sheet of not less than 3 lbs. nor more than 5 lbs. weight per sq. ft. derived from material allocated to manufacturers of sheet lead for the manufacture of building supplies.

Lead pipe not less than  $\frac{3}{8}$  in. nor more than 4 in. bore derived from material allocated to manufacturers of lead pipe for the manufacture of building supplies.

Copper pipe for the conveyance of water, gas, waste or soil in building.

Domestic type solid fuel burning heating and cooking appliances of cast iron and/or steel but excluding heat storage and fully insulated cookers frets and stools for open grates mantel registers and tile registers.

Clear sheet glass of not less than 18 oz. per sq. ft. nor more than 32 oz. per sq. ft. weight or not less than 2.0 m.m. nor more than 4.2 m.m. in thickness in sizes not less than 144 sq. ins.

Metal conduit boxes, electrical, of types normally used for domestic purposes.

Metal conduit, electrical, of types normally used for domestic purposes.

Electrical plugs and socket outlets with or without switches three-pin up to and including 15 amp.

Electrical main switches, switch fuses, and fuseboards up to and including 60 amp. of types normally used for domestic purposes.

Electrical switches, tumbler, wall type (surface, semi-recessed or flush) and ceiling types, up to and including 15 amp. of types normally used for domestic purposes.

[209]

### EXPLANATORY NOTE

*(This Note is not part of the Order, but is intended to indicate its general purport.)*

*This Order applies statutory sanction to the use of priority certificates issued in connection with the sale or purchase of certain building materials and fittings.*

# CINEMATOGRAPHS

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## CASES

*Theatres and places of entertainment—Cinematograph—Sunday performance—Permission—Condition—Prohibition of admission of child under fifteen—Sunday Entertainments Act, 1932 (c. 51), s. 1.*

It is not *ultra vires* a licensing authority, when allowing, under s. 1 (1) of the Sunday Entertainments Act, 1932, cinematograph theatres in their area to be opened on Sundays, to impose a condition that children under the age of fifteen years, whether accompanied by an adult or not, should be excluded. The authority, when imposing conditions, may take into consideration matters which do not directly affect the premises or the nature of the performance, but which are designed to effect a benefit to the community.

*Harman v. Butt* ([1944] K. B. 49; [1944] 1 All E. R. 558), *followed*.

*Theatre de Luxe (Halifax), Ltd. v. Gledhill*, ([1915] 2 K. B. 49), *distinguished*.—ASSOCIATED PROVINCIAL PICTURE HOUSES, LTD. v. WEDNESBURY CORPN., [1947] 1 All E. R. 498; [1947] L. J. R. 678; 176 L. T. 351; 111 J. P. 216; 63 T. L. R. 184; 91 Sol. Jo. 149; 45 L. G. R. 195; *affirmed*. [1947] 2 All E. R. 680, C. A. [210]

# COMPUTATION OF TIME

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## STATUTES

### SUMMER TIME ACT, 1947

(10 & 11 Geo. 6, c. 16)

### PRELIMINARY NOTE

The Summer Time Act, 1922 (19 Halsbury's Statutes 420), which was originally a temporary Act limited to expire on December 31, 1923, unless extended, provided that the time for general purposes in Great Britain should, during the period of summer time, be one hour in advance of Greenwich mean time. For the purposes of that Act the period of summer time was taken to be the period from 2 a.m. Greenwich mean time in the morning of the day next following the third Saturday in April (or, if that day were Easter Day, the day next following the second Saturday in April) to 2 a.m. Greenwich mean time in the morning of the day next following the third Saturday in September. By the Summer Time Act, 1925 (19 Halsbury's Statutes 421), the Act of 1922 was made permanent and the period of summer time was extended by substituting the first Saturday in October for the third Saturday in September.

During the war years the period of summer time for the purpose of the Summer Time Acts, 1922 and 1925, was fixed by the Defence (Summer Time) Regulations, 1939 (S. R. & O., 1939, No. 1379, as amended by S. R. & O., 1940, No. 1883, S. R. & O., 1941, No. 476, and S. R. & O., 1942, No. 506), double summer time being introduced in 1941. These regulations were revoked by S. R. & O., 1945, No. 1208, and the present legislation became necessary in order to fix a period other than that prescribed by the Acts of 1922 and 1925.

The Summer Time Act, 1947, fixes the period of summer time for the year

1947 as the period from March 16, 1947, to November 2, 1947, and in addition prescribes a period of double summer time which ran from 1 a.m. Greenwich mean time in the morning of April 13, 1947, to the same time in the morning of August 10, 1947.

In addition, power is taken to fix periods of summer time in future years by Orders in Council (which will require affirmative resolutions of both Houses of Parliament) in order to save the necessity of further legislation.

It is expressly provided that the meaning of "the period of summer time" in s. 1 (4) of the Road Transport Lighting Act, 1927 (19 Halsbury's Statutes 100), which defines "the hours of darkness" as respects the period of summer time and as respects the remainder of the year, in connection with the obligation imposed by that section as to the carrying of lights on vehicles during the hours of darkness, is not to be affected by the above provisions of the present Act or of any Order in Council made thereunder.

The Act is to be construed as one with the Summer Time Acts, 1922 and 1925, and may be cited with those Acts as the Summer Time Acts, 1922 to 1947. [211]

*An Act to amend the Summer Time Acts, 1922 and 1925.* [212]

[11th March, 1947.]

**1. Summer time and double summer time for 1947 and subsequent years.—**

(1) In relation to the year nineteen hundred and forty-seven, the Summer Time Acts, 1922 and 1925, shall have effect subject to the following modifications :—

(a) the period of summer time for the purposes of those Acts shall begin on the sixteenth day of March instead of the twentieth day of April, and shall end on the second day of November instead of the fifth day of October; and

(b) during the period beginning at one o'clock, Greenwich mean time, in the morning of the thirteenth day of April and ending at one o'clock Greenwich mean time, in the morning of the tenth day of August, the time for general purposes of Great Britain shall be two hours instead of one hour in advance of Greenwich mean time.

[213]

(2) In relation to any year after the year nineteen hundred and forty-seven His Majesty may by Order in Council direct—

(a) that the period of summer time for the purposes of the Summer Time Acts, 1922 and 1925, shall be such period as may be specified in the Order instead of the period prescribed by those Acts;

(b) that the time for general purposes in Great Britain shall, during any part of the period of summer time, be two hours instead of one hour in advance of Greenwich mean time,

and the said Acts shall have effect subject to the provisions of any such Order in Council. [214]

(3) Nothing in this section or in any Order in Council made thereunder shall affect the meaning of "the period of summer time" in subsection (4) of section one of the Road Transport Lighting Act, 1927 (which defines the hours of darkness for the purposes of that section). [215]

*Summer Time Act, 1922.*—19 Halsbury's Statutes 420.

*Summer Time Act, 1925.*—19 Halsbury's Statutes 421.

*April 20, 1947, and October 5, 1947.*—These are the dates on which summer time would have begun and ended, respectively, in accordance with the Summer Time Acts, 1922 and 1925, but for the modifications to those Acts effected by the present legislation.

*Road Transport Lighting Act, 1927.*—19 Halsbury's Statutes 100.

**2. Provisions as to Orders in Council under s. 1.—**(1) Any power to make an Order in Council conferred by this Act shall include power to revoke or vary any such Order by a subsequent Order in Council. [216]

(2) No Order in Council shall be made under this Act unless, after copies of the draft thereof have been laid before Parliament, each House presents an Address to His Majesty praying that the Order be made. [217]

*Each House presents an Address.*—Under this, the so-called “affirmative resolution procedure,” no Order in Council can be made without the express authority of Parliament; therefore, though Parliament is delegating some of its authority, a measure of control is retained. The provisions of the Statutory Instruments Act, 1946, ss. 4–7 (39 Halsbury’s Statutes 785 *et seq.*) do not apply to affirmative resolution procedure.

**3. Application to Northern Ireland, Channel Islands and Isle of Man.** [218]

**4. Citation and construction.**—This Act may be cited as the Summer Time Act, 1947, and this Act shall be construed as one with the Summer Time Acts, 1922 and 1925; and those Acts and this Act may be cited together as the Summer Time Acts, 1922 to 1947. [219]

*Summer Time Act, 1922.*—19 Halsbury’s Statutes 420.

*Summer Time Act, 1925.*—19 Halsbury’s Statutes 421.

## DESTRUCTIVE INSECTS AND PESTS

*See also* AGRICULTURE; RATS AND MICE

STATUTES :—

Agriculture Act, 1947, ss. 98–101, 110, 111, Sched. XIII - - - - - PAGE 64

### STATUTES

#### AGRICULTURE ACT, 1947

(10 & 11 Geo. 6, c. 48)

#### PRELIMINARY NOTE

Four sections of the Agriculture Act, 1947, come within the scope of the present title, namely, ss. 98–101, which deal with the prevention of damage by animals and birds to crops, pasture, animal or human foodstuffs, livestock, trees, hedges, banks and works on land. These sections had not been brought into operation at the date of going to press (see s. 111 (3)), but when brought into operation they will replace the emergency powers contained in regulation 63 of the Defence (General) Regulations, 1939 (S. R. & O., 1939, No. 927, as amended), and orders made thereunder.

The Minister is empowered, for the prevention of this type of damage, to require the destruction or taking by a person having the right to do so of rabbits, hares and other rodents, deer, foxes and moles and wild birds and their eggs (other than certain protected wild birds) (s. 98 (1), (4)); to require steps to be taken to prevent the escape of captive animals which might cause damage (s. 99); to pay, with Treasury approval, contributions to bodies of persons towards the cost of destruction and taking (s. 98 (5)), and to provide services and equipment, for which reasonable charges may be made, to assist in such destruction and taking (s. 101). Poisonous gas may be used in the destruction of the animals mentioned above (s. 98 (3)).

There are penalties for failure to comply with the Minister’s requirements (s. 100 (1)), and, in addition, the Minister has the default power of arranging for the necessary destruction and taking and of recovering the cost from the defaulter (s. 100 (2)).

In relation to rabbits these provisions are to supersede those of Part I of the Prevention of Damage by Rabbits Act, 1939 (32 Halsbury’s Statutes 82), which is accordingly repealed prospectively by ss. 98 (6), 110 and Sched. XIII, *post*. [220]

## ARRANGEMENT OF SECTIONS

\* \* \* \* \*

## PART V

## ADMINISTRATIVE AND GENERAL

\* \* \* \* \*

*Pest and Weed Control*

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*An Act to make further provision for agriculture.* [221]

[6th August, 1947.]

\* \* \* \* \*

## PART V

## ADMINISTRATIVE AND GENERAL

\* \* \* \* \*

*Pest and Weed Control*

**98. Prevention of damage by pests.**—(1) If it appears to the Minister that it is expedient so to do for the purpose of preventing damage to crops, pasture, animal or human foodstuffs, livestock, trees, hedges, banks or any works on land, he may by notice in writing served on any person having the right so to do require that person to take, within such time as may be specified in the notice, such steps (including such steps, if any, as may be so specified) as may be necessary for the killing, taking or destruction on land so specified of such animals or birds to which this section applies as may be so specified or the eggs of such birds. [222]

(2) A requirement shall not be imposed under the last foregoing subsection if apart from this subsection the killing, taking or destruction in question would be prohibited by law :

Provided that a requirement may be so imposed to kill or destroy game within the meaning of the Game Act, 1831, at a time of year at which apart from this proviso the killing or destruction would be prohibited by section three of that Act ; and for the purposes of the last foregoing subsection a person shall not be deemed not to have the right to comply with a requirement falling within this proviso by reason only that apart from this proviso compliance therewith would be prohibited as aforesaid. [223]

(3) Section four of the Prevention of Damage by Rabbits Act, 1939 (which allows the use in rabbit holes of poisonous gas, and the placing in

rabbit holes of substances generating poisonous gas by evaporation or in contact with moisture) shall apply to the use of such gas and the placing of such substances in any hole, burrow or earth for the purpose of killing animals to which this section applies. [224]

(4) The animals to which this section applies are rabbits, hares and other rodents, deer, foxes and moles, and the birds to which this section applies are, in relation to any area, wild birds other than those specified in the Schedule to the Wild Birds Protection Act, 1880, as it applies in that area whether by virtue of the terms thereof or of any subsequent enactment or by virtue of an order of the Secretary of State; and this section shall apply to such other animals as may be prescribed:

Provided that regulations under this subsection may provide that for the purposes of subsection (3) of this section any such other animals specified in the regulations shall not be treated as animals to which this section applies. [225]

(5) The Minister may with the approval of the Treasury make contributions towards the expenses incurred by any body of persons in killing, taking or destroying animals or birds to which this section applies or the eggs of such birds. [226]

(6) Part I of the Prevention of Damage by Rabbits Act, 1939, shall cease to have effect. [227]

*Effect of section.*—See the Preliminary Note, *ante*.

*The Minister.*—The Minister of Agriculture and Fisheries.

*If it appears to the Minister.*—These words are inserted for the purpose of making the Minister the sole judge of the expediency of serving the notices referred to in sub-s. (1), *ante*. For a consideration of similar words, see *E. v. Comptroller General of Patents, Ex parte Bayer Products, Ltd.*, [1941] 2 K. B. 306; [1941] 2 All E. R. 677.

*As may be necessary.*—The necessity or otherwise of the actual steps which the Minister may require to be taken will be a matter for the decision of the Court on proceedings for failure to comply with a requirement of the Minister.

*Prohibited by law.*—There are various existing statutory prohibitions on the destruction or taking of animals and birds, e.g., s. 5 (1) of the Prevention of Damage by Rabbits Act, 1939 (32 Halsbury's Statutes 83), prohibiting the use of spring traps above ground for the purpose of killing hares or rabbits, and s. 1 of the Wild Birds Protection Act, 1908 (1 Halsbury's Statutes 364), prohibiting the taking of a wild bird by means of a hook or other similar instrument; and the Minister is prevented, by sub-s. (2), *ante*, with one exception, from imposing a requirement under sub-s. (1) which would have the effect of dispensing with such prohibitions. The one exception is that he may require the destruction of game at any time of the year, notwithstanding the prohibition imposed by s. 3 of the Game Act, 1831 (8 Halsbury's Statutes 1066), on the killing or taking of game during the close season.

*Game Act, 1831.*—8 Halsbury's Statutes 1066. Game for the purpose of this Act is defined by s. 2 thereof as including hares, pheasants, partridges, grouse, heath or moor game, black game and bustards.

*Prevention of Damage by Rabbits Act, 1939, s. 4.*—32 Halsbury's Statutes 83. This section, which allows the use of poisonous gas in rabbit holes, or the placing in rabbit holes of substances which, by evaporation or in contact with moisture, generate gas, is now extended to cover, subject to the proviso to sub-s. (4), *supra*, all animals to which the present section applies.

It should be noted that the use of poisonous gas is confined to animals and that it may not in any event be used except in holes. There is no authority to use poison as distinct from such gas, but by the proviso to s. 8 of the Protection of Animals Act, 1911 (1 Halsbury's Statutes 377) (substituted by s. 1 of the Protection of Animals (Amendment) Act, 1927), poison may be placed for destroying rats, mice or other small vermin so long as reasonable precautions are taken to prevent injury to domestic animals and wild birds.

*Wild Birds Protection Act, 1880, Sched.*—1 Halsbury's Statutes 358. This Schedule protects 86 different varieties of birds.

*Prescribed.*—This means prescribed by regulations made by the Minister (see ss. 108 (2), 109 (3), title AGRICULTURE, *ante*). Animals added by regulations may be excluded from the provisions of sub-s. (3), *ante*, as to destruction by poisonous gas.

*Body of persons.*—Grants under sub-s. (5), *supra*, are not payable to individuals.

*Use of spring traps.*—The Bill, as originally drafted, contained a separate clause similar to para. (5B) of regulation 63 of the Defence (General) Regulations, 1939 (S. R. & O., 1939, No. 927, as amended), modifying the provisions of s. 5 (1) of the Prevention of Damage by Rabbits Act, 1939 (32 Halsbury's Statutes 83), which prohibits the use of spring traps above the ground for the killing of hares or rabbits. The effect of the clause would have been to allow the use of spring traps above the ground in cases where this was authorised by the Minister. Speaking on the clause in Committee, the Minister said that he had sought the views of County Executive Committees and about half of them had been of opinion that open trapping was necessary to the effective control of rabbits, while the other half had held the contrary opinion. He further added that during the years 1941 to 1945 some 1,500 open trapping permits had been granted annually by War Agricultural Executive Committees

(H. of C. Official Report, S.C.A., April 16, 1947, col. 915). On a division the clause was rejected by a substantial majority.

*Definitions.*—For definitions of “pasture” and “livestock,” see s. 109 (3), title **AGRICULTURE, ante**.

**99. Prevention of escape of captive animals.**—If it appears to the Minister that, for the purpose of preventing such damage as is mentioned in the last foregoing section, it is expedient to prevent the escape of any animals from land on which they are kept in captivity, the Minister may by notice in writing served on the occupier of the land require him to take within such time as may be specified in the notice such steps as may be necessary to prevent the escape thereof, including such steps, if any, as may be specified in the notice. [228]

*Effect of section.*—See the Preliminary Note, *ante*.

*The Minister.*—The Minister of Agriculture and Fisheries.

*If it appears to the Minister.*—See note to s. 98, *ante*.

**100. Supplementary provisions relating to sections ninety-eight and ninety-nine.**—(1) If any person fails to comply with a requirement imposed under either of the two last foregoing sections he shall be liable on summary conviction to a fine not exceeding twenty-five pounds, and to a further fine not exceeding five pounds for each day after conviction on which the failure continues. [229]

(2) Without prejudice to any proceedings under the last foregoing subsection, where a requirement imposed under either of the two last foregoing sections has not been complied with, any person authorised by the Minister to act for the purposes of this subsection may at any time enter on the land to which the requirement relates and take such steps as the Minister may direct to secure compliance with the requirement; and the reasonable cost of taking such steps shall be recoverable by the Minister from the person on whom the requirement was imposed.

Any dispute arising under this subsection as to what is the reasonable cost of taking any such steps as aforesaid shall be determined by the arbitration of an arbitrator appointed in default of agreement by the President of the Royal Institution of Chartered Surveyors. [230]

(3) The Minister may give such directions as appear to him to be expedient authorising the keeping of animals, birds, or eggs killed or taken in pursuance of the provisions of this or the last but one foregoing section and authorising the disposal of such animals, birds or eggs, whether for the purpose of being used as food or otherwise. [231]

(4) Any person authorised or required to kill or take any animal or bird in pursuance of the provisions of this or the last but one foregoing section shall not be required to obtain for that purpose a licence to kill game, and shall have the same power of selling any such animal or bird in pursuance of any such authorisation or requirement as if he had such a licence, but nothing in this section shall exempt any person from the provisions of the Gun Licence Act, 1870. [232]

(5) Where a person incurs any expense reasonably necessary for the purpose of complying with any requirement imposed on him under either of the two last foregoing sections, or where any cost is recovered from a person under subsection (2) of this section, then if he alleges that the expense or cost ought to be borne wholly or in part by some other person having an interest in the land to which the requirement in question relates, he may apply to the county court in accordance with rules of court, and the court, after hearing the parties and any witnesses whom they may desire to call, may make such order for securing that the applicant is wholly or in part indemnified by that other person in respect of the said expense or cost as the court considers just and equitable in the circumstances of the case. [233]



(6) Any notice to be served under either of the two last foregoing sections on the occupier of land used for agriculture shall, where an agent or servant of the occupier is responsible for the control of the farming of the land, be duly served if served on the said agent or servant. [234]

*Effect of section.*—See the Preliminary Note, *ante*.

*The Minister.*—The Minister of Agriculture and Fisheries.

*Licence to kill game.*—The Game Licence Act, 1860, s. 4 (8 Halsbury's Statutes 1086), requires licences to be obtained for the taking, killing or pursuing, or the aiding or assisting in any manner in the taking, killing or pursuing, of any game, or any woodcock, snipe, quail, landrail, coney or deer. A number of exceptions and exemptions are contained in s. 5 of that Act. S. 14 of the same Act requires the taking out of excise licences to deal in game.

*Gun Licence Act, 1870.*—S. 7 of this Act (8 Halsbury's Statutes 1094) requires licences to be taken out by persons using or carrying guns elsewhere than in dwelling-houses or the curtilages thereof under penalty of £10. There are exemptions in favour of certain persons, including the holders of licences to kill game, occupiers of land using or carrying guns only for scaring birds or killing vermin on their land, and persons using guns solely for such purposes by order of the occupiers if the latter hold gun or game licences.

### 101. Provision by Minister of equipment and services for pest control.—

(1) The Minister may, for the purpose of assisting in the killing, taking or destruction of animals or birds to which section ninety-eight of this Act applies, and the eggs of such birds, provide such services and equipment, appliances and other material as appear to the Minister to be requisite for that purpose. [235]

(2) The Minister may make such reasonable charges, if any, as he thinks fit in respect of any assistance rendered under the last foregoing subsection, and may recover the amount of any such charge from the person at whose request the assistance was rendered. [236]

*Effect of section.*—See the Preliminary Note, *ante*.

*The Minister.*—The Minister of Agriculture and Fisheries.

*Animals or birds to which s. 98 applies.*—These are specified in s. 98 (4), *ante*. Additions may be made to the list of animals by regulations.

*Recovery of charges.*—The question what charges are reasonable is in the complete discretion of the Minister.

\* \* \* \*

### Supplementary

\* \* \* \*

**110. Repeals.**—The enactments specified in the Thirteenth Schedule to this Act are, save as provided in Part III of this Act, hereby repealed to the extent specified in the third column of that schedule. [237]

*Commencement of section.*—Up to the time of going to press this section had been brought into operation as from October 1, 1947, only to the extent specified in the Agriculture Act, 1947 (Commencement) Order, 1947; S. R. & O., 1947, No. 1767 (see title AGRICULTURE, *ante*). Of the enactments mentioned in Sched. XIII as printed *post*, only the repeal of s. 5 (4) of the Destructive Imported Animals Act, 1932, was included.

*Qualifications on repeal.*—Since 1889 savings on a repeal have, by s. 38 of the Interpretation Act, 1889 (18 Halsbury's Statutes 1005), attached automatically without special mention.

**111. Short title, commencement and extent.**—(1) This Act may be cited as the Agriculture Act, 1947. [238]

(2) This Act shall come into operation on such date as His Majesty may by Order in Council appoint; and an Order under this subsection may appoint different dates in relation to different provisions of this Act. [239]

(3) This Act, except in so far as is expressly provided therein, shall not extend to Scotland or Northern Ireland. [240]

*Date of commencement.*—Up to the time of going to press, no date for the commencement of ss. 98–101, *ante*, had been specified. S. 110 and Sched. XIII had been brought into operation only to the extent specified in the note to s. 110, *supra*.

## SCHEDULES

\* \* \* \* \*

## Section 110

## THIRTEENTH SCHEDULE

## ENACTMENTS REPEALED

Session and Chapter	Short title	Extent of repeal
* * *	* * *	* * *
22 & 23 Geo. 5, c. 12.	The Destructive Imported Animals Act, 1932.	Section four ; in section five, sub-section (4).
* * *	* * *	* * *
2 & 3 Geo. 6, c. 43	The Prevention of Damage by Rabbits Act, 1939.	Part I.
* * *	* * *	* * *

[241]

*Date of commencement.*—See note to s. 110, *ante*.

*Destructive Imported Animals Act, 1932*, ss. 4, 5 (4).—25 Halsbury's Statutes 55.

*Prevention of Damage by Rabbits Act, 1939, Part I.*—32 Halsbury's Statutes 82. Note that this Part also "ceases to have effect" by virtue of s. 98 (6), *ante*.

## DISEASES

## ORDERS, CIRCULARS AND MEMORANDA :—

Acute Rheumatism Regulations, 1947

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## ORDERS, CIRCULARS AND MEMORANDA

## ACUTE RHEUMATISM REGULATIONS, 1947

S. R. &amp; O., 1947, No. 1828

August 21, 1947

Whereas the Minister of Health is empowered by section 143 of the Public Health Act, 1936, to make regulations with a view to the treatment of persons affected with any epidemic, endemic or infectious disease and for preventing the spread of such diseases, and by such regulations to apply, with or without modifications, to any disease to which the regulations relate, any enactment (including any enactment in the said Act) relating to the notification of disease or to notifiable diseases ;

And whereas acute rheumatism as herein defined is an endemic disease ;

And whereas the Minister of Health is further empowered by section 283 of the said Act to prescribe the form of any certificate to be used for any of the purposes of the said Act :

Now therefore the Minister of Health in exercise of his powers under the said sections and of all other powers enabling him in that behalf hereby makes the following regulations, that is to say :—

1.—(1) These regulations may be cited as the Acute Rheumatism Regulations, 1947.

(2) These regulations shall come into operation on the first day of October, 1947, and shall continue in operation for a period of three years from that date. [242]

2. These regulations shall apply to the administrative county of Lincoln, Parts of Lindsey, and to the county boroughs of Bristol, Grimsby, Lincoln and Sheffield, and shall be enforced and executed in the said county and in each of the said county boroughs by the council thereof. [243]

3.—(1) In these regulations unless the context otherwise requires—

“acute rheumatism” means the following conditions occurring separately or together in a person under the age of sixteen years :—

- (i) rheumatic pains or arthritis accompanied by a rise of temperature ;
- (ii) rheumatic chorea ;
- (iii) rheumatic carditis ;
- (iv) valvular disease of the heart of rheumatic origin.

“local authority” means as respects the County of Lincoln, Parts of Lindsey, or any of the county boroughs to which these regulations apply, the council of the said county or county borough.

(2) The Interpretation Act, 1889, applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament. [244]

4. Every local authority shall give notice of these regulations by advertisement in one or more local newspapers circulating within their county or district and in such other manner as they think sufficient for informing persons interested and shall also send a copy of these regulations to every registered medical practitioner who, after due enquiry, is ascertained to be practising within their county or district. [245]

5. Sections 144 to 146 of the Public Health Act, 1936, being enactments relating to the notification of disease, shall, as modified and set out in the first schedule to these regulations, apply to acute rheumatism. [246]

6.—(1) Upon the receipt of a certificate under these regulations or on becoming aware in any other way of a case or suspected case of acute rheumatism in the county or district of the local authority the medical officer of health or an officer of the authority acting under his instructions shall make such enquiries and take such steps as are necessary or desirable for investigating the source of disease, for removing conditions harmful to the patient and for arranging for the treatment of the patient :

Provided that nothing in this regulation shall be deemed to authorise the medical officer of health or other officer to take any of the steps herein mentioned at any institution other than one belonging to the local authority except with the consent of the managers of that institution.

(2) The duties assigned to the medical officer of health by the Sanitary Officers (Outside London) Regulations, 1935, shall be deemed to extend to and to include all action by a medical officer of health in the execution of these regulations. [247]

7. The form set out in the second schedule to these regulations is hereby prescribed as the form of certificate to be used for the purposes of these regulations. [248]

## FIRST SCHEDULE

### PUBLIC HEALTH ACT, 1936

Section 144.—(1) When an inmate of any building used for human habitation is suffering from acute rheumatism every medical practitioner attending on, or called in to visit that inmate (in this section referred to as the “patient”) shall, as soon as he becomes aware that the patient is suffering from acute rheumatism send to the medical officer of health of the local authority in whose county or district the building is situate, a certificate in the prescribed form :

Provided that this subsection shall not apply where the medical practitioner has reasonable grounds for supposing that the case has already been notified under these regulations.

(2) Any medical practitioner who fails to send a certificate which he is required by this section to send shall be liable to a fine not exceeding forty shillings.

Section 145.—(1) A local authority shall, upon application, supply forms of certificate for use under the last preceding section free of charge to any medical

practitioner practising in their county or district, and shall pay to a medical practitioner for each certificate duly sent by him under that section a fee of two shillings and sixpence if the case occurs in his private practice, and a fee of one shilling if the case occurs in his practice as medical officer of any public body or institution.

(2) Where the medical practitioner attending a patient is himself the medical officer of health of the county or district, he shall be entitled to the fee to which, if he were not the medical officer of health, he would have been entitled in respect of a certificate sent by him to the medical officer.

Section 146.—(1) Where a case of acute rheumatism occurs in a building in the occupation of any of His Majesty's forces, or of any person employed by or under the Admiralty, the Army Council, or the Air Council, it shall be the duty of the medical practitioner attending the patient to certify the case to the medical officer of health of the local authority, if it would have been his duty so to certify it had it occurred in a building in private occupation.

(2) Unless the medical practitioner is a medical officer holding a commission in His Majesty's forces, the local authority shall pay to him for the certificate a fee of one shilling, whether the case occurs in his private practice or not. [249]

## SECOND SCHEDULE

### FORM OF CERTIFICATE

To the Medical Officer of Health of { the county of\* .....  
the county borough of\* .....

I hereby certify and declare that, in my opinion an inmate  
of is suffering from acute rheumatism.†

The case occurs { in my private practice.\*  
in my practice as medical officer of a public body or  
institution.\*

Age of Patient . Sex .

Date of onset of the disease 19 .

Signed

Address

Dated the day of 19 . [250]

\* Strike out the words inappropriate to the case.

† Acute rheumatism for the purpose of the Acute Rheumatism Regulations, 1947, refers to the following conditions occurring separately or together in a person under the age of 16 years :—

- (i) rheumatic pains or arthritis if accompanied by a rise of temperature ;
- (ii) rheumatic chorea ;
- (iii) rheumatic carditis ;
- (iv) valvular disease of the heart of rheumatic origin.

\* \* \* \* \*

## EDUCATION

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## STATUTES

### POLISH RESETTLEMENT ACT, 1947

(10 & 11 Geo. 6, c. 19)

### PRELIMINARY NOTE

The Polish Resettlement Act, 1947, was passed primarily to enable certain Government departments to take over functions previously performed by the

Interim Treasury Committee for Polish Questions, which was set up when the "Caretaker" Government withdrew its recognition of the London Polish Government on July 5, 1945. S. 6 of the Act deals with the provision by the Minister of Education of educational services for Polish citizens in Great Britain, the cost of such services being met by the Minister and not by the local authorities.

Among other measures, it is proposed to establish in London a Polish University College which will continue and extend the work of the Polish Board of Technical Studies. This is, however, to be regarded only as a temporary expedient lasting until there are sufficient vacancies at British universities to accommodate all Polish students desiring further education without giving them preference over British students.

The curriculum at the College is to be on British lines so as to qualify students to partake of the British way of life either in this country or in the Dominions. The students, who are expected to number about 1,300, will receive grants varying from £180 to £240 a year exclusive of fees. Primary and secondary schools set up by the London Polish Government and taken over by the Interim Treasury Committee are also to be continued under the present Act.

Other relevant provisions of the Act appear under the title PUBLIC ASSISTANCE, *post.* [251]

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*An Act to provide for the application of the Royal Warrant as to pensions, etc., for the military forces to certain Polish forces, to enable the Assistance Board to meet the needs of, and to provide accommodation in camps or other establishments for, certain Poles and others associated with Polish forces, to provide for their requirements as respects health and educational services, to provide for making arrangements and meeting expenses in connection with their emigration, to modify as respects the Polish resettlement forces and past members of certain Polish forces provisions relating to the service of aliens in the forces of the Crown, to provide for the discipline and internal administration of certain Polish forces and to affirm the operation up to the passing of this Act of provision previously made therefor, and for purposes connected therewith and consequential thereon.* [252]

[27th March, 1947.]

\* \* \* \* \*

#### 6. Provision by the Minister of Education of educational services.—

(1) The Minister of Education may, for meeting the educational needs of persons being of any description for whom the Assistance Board have power to provide accommodation under section three of this Act or members of any of the Polish resettlement forces, provide any such services and do any such things as a local education authority or the Minister of Education are or is authorised or required to provide or do, or may be authorised or required to provide or do, by or under the Education Acts, 1944 and 1946. [253]

(2) The Minister of Education may make arrangements with any other government department or other authority or person for the provision of services or the doing of things under this section, on his behalf and at his expense, by that authority or person. [254]

(3) The expenses of the Minister of Education under this section shall be defrayed out of moneys provided by Parliament. [255]

*Minister of Education.*—S. 1 (1) of the Education Act, 1944 (37 Halsbury's Statutes 127) established the Ministry of Education in place of the Board of Education and provided for the appointment of a Minister of Education.

*Assistance Board.*—This was formerly the Unemployment Assistance Board, constituted under s. 35 of the Unemployment Act, 1934 (27 Halsbury's Statutes 786). Its name was changed and its functions enlarged by s. 10 of the Old Age and Widows' Pensions Act, 1940 (33 Halsbury's Statutes 517).

*S. 3 of this Act.*—This section empowers the Assistance Board to accommodate persons in Great Britain "being of any of the categories specified in subsection (2) of the last preceding section, or dependants of persons of any of those categories or of members of any of the Polish resettlement forces serving therewith, or persons formerly dependent on a person who was of any of those categories, or was such a member of any of those forces, at that former time." The categories specified in s. 2 (2) are:—

"(a) Poles whose registration under the Aliens Order, 1920, took place on or after the first day of September, nineteen hundred and thirty-nine, and who have been permitted to enter, or to remain in, the United Kingdom in view of circumstances attributable to war, as to which, in case of doubt, a certificate of the Secretary of State shall be conclusive;

"(b) former members of any of the forces mentioned in subsection (1) of section one of this Act (including the naval detachment therein mentioned), and members of any of those forces relegated from service therewith;

"(c) wives of men of categories (a) and (b), and any woman who, having been the wife of a man of either of those categories, has ceased so to be, and has not remarried;

"(d) persons who have been permitted to enter the United Kingdom on or after the first day of September, nineteen hundred and thirty-nine, as being followers of a body of Polish forces entering the United Kingdom and dependent thereon or on members thereof, as to which, in case of doubt, a certificate of the Secretary of State shall be conclusive."

*Polish resettlement forces.*—By s. 10 (1) of the present Act this phrase means "the Polish Re-Settlement Corps, the Polish Re-Settlement Corps (Royal Air Force), the Polish Re-Settlement Section of the Auxiliary Territorial Service, and the Polish Re-Settlement Section of the Women's Auxiliary Air Force."

*Local education authority.*—It is provided by s. 6 (1) of the Education Act, 1944 (37 Halsbury's Statutes 130) that, subject to certain provisions as to the establishment of joint education boards (Sched. I, Part I to that Act), the local education authority for each county shall be the council of the county, and for each county borough shall be the council of the county borough.

*Education Act, 1944.*—37 Halsbury's Statutes 123. This Act replaced almost the whole of the previous law relating to education. It extended the powers and duties both of local education authorities, which are now under a duty to provide facilities for secondary, technical and adult education, and of the central authority, the Minister being charged with the duty, not merely of superintending education, but of promoting the education of the people of England and Wales and securing the effective execution by local authorities under his control and direction of the national policy for providing a varied and comprehensive educational service in every area.

*Education Act, 1946.*—39 Halsbury's Statutes 122. Ss. 1-6 of this Act gave local education authorities certain additional powers, for instance, as to payment of the cost of enlarging a controlled school (s. 1), and as to the division of a single school into two or more schools (s. 2).

*Sub-s. (2).*—This subsection provides for delegation of the Minister's powers. The "other authority or person" to whom powers may be delegated need not necessarily be British (see 433 H. of C. Official Report 1535 *et seq.*).

*Intention of the Minister.*—When the present Act, as a Bill, was being considered by the House of Commons at the Committee Stage on February 20, 1947, the Minister of Education said of the present provisions:

"It seems to me that all this Clause as it stands does is to place the Ministry of Education in a position to carry out on behalf of the Minister what hitherto would have been carried out by the local education authority. Because of that fact it has set up a special machine for the purpose. It is my intention . . . to appoint a committee to work out all the points brought to notice by hon. Members, but, in carrying out our duty, we do not intend to imperil the opportunities which are being offered to our own ex-Servicemen."

\* \* \* \* \*

**13. Short title.**—This Act may be cited as the Polish Resettlement Act, 1947. [256]

\* \* \* \* \*

## NATIONAL SERVICE ACT, 1947

(10 & 11 Geo. 6, c. 31)

### PRELIMINARY NOTE

When conscription was introduced early in 1939 there was no suggestion that it should be anything but a temporary expedient designed to meet a particular threat to national security. Since then, however, the whole basis of recruitment

to the Armed Forces has changed : Britain has to a large extent departed from her tradition of voluntary service and has substituted in its place arrangements based on the continental system of conscription.

In these circumstances it has been thought appropriate to make such provision (s. 10) as is possible for the continuation of the education of young men of eighteen and over while serving their compulsory period (usually twelve months) of whole-time service under the new system which is designed to commence on January 1, 1949. The effect of this provision is summarised in the notes to s. 10, *infra*.

S. 11 of the present Act substantially reproduces s. 10 of the Military Training Act, 1939 (32 Halsbury's Statutes 605), which, suspended by s. 12 of the National Service (Armed Forces) Act, 1939 (32 Halsbury's Statutes 1053), was allowed to expire on May 26, 1942.

Other relevant sections of the present Act appear under the titles AIR-RAID PRECAUTIONS, *ante*, and OFFICERS OF LOCAL AUTHORITIES, *post*. [257]

### ARRANGEMENT OF SECTIONS

	*	*	*	*	*	
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*An Act to confine the operation of the National Service Acts to male British subjects and to service in the armed forces of the Crown ; to make provision as to the terms and conditions of such service and as to the period for which those Acts shall continue in operation ; and for purposes connected with the matters aforesaid.* [258] [18th July, 1947.]

\* \* \* \* \*

### *Education and Education Authorities*

**10. Further education during whole-time service.**—(1) The duty of local education authorities under section forty-one of the Education Act, 1944, to secure the provision for their area of adequate facilities for further education shall not extend to any person during his term of whole-time service ; and a person shall, during his term of whole-time service, be exempt from compulsory attendance for further education under that Act. [259]

(2) It shall be the duty of the Service Authorities to provide, so far as may be practicable, further education within the meaning of the said section forty-one for persons during their terms of whole-time service ; and, notwithstanding the provisions of the last foregoing subsection, every local education authority shall have power to provide, or secure the provision of, such facilities for further education for such persons as aforesaid as may be agreed between them and any Service Authority, upon such terms, if any, as may be so agreed. [260]

(3) In making arrangements for such further education as aforesaid the Service Authorities shall have regard to any representations made to them by or on behalf of bodies of persons concerned with education. [261]

*Effect of section.*—S. 41 of the Education Act, 1944 (37 Halsbury's Statutes 170), obliges local education authorities to secure the provision of facilities for (a) full-time and part-time education for persons over compulsory school age, and (b) leisure-time occupation in training and recreation, when desired, and the object of the present section is to transfer, as from January 1, 1949, the obligation to the Service Authorities as regards national service men during their whole-time service. Local education authorities may, however, make



educational arrangements with the Service Authorities. The obligation of local education authorities under s. 41 remains unchanged during the subsequent part-time service under s. 2 (2) of the present Act.

*Local education authority.*—This term is defined in s. 114 (1) of the Education Act, 1944 (37 Halsbury's Statutes 217).

**11. Information to be furnished by education authorities.**—It shall be the duty of every local education authority, and of the governing body or other persons having the management of any university, school or other educational institution, to give to the Minister, on his request, such information in their possession, or reasonably available to them, about male persons receiving, or who have received, education for which the local education authority are responsible, or, as the case may be, education at the university, school or other institution, as the Minister may from time to time require for the purpose of assisting his consideration of questions connected with their being called up for service under this Act. [262]

*Effect of section.*—As from January 1, 1949, persons and bodies responsible for educational establishments are required to give to the Minister on request available information as to male pupils and ex-pupils in order to assist the Minister in considering questions connected with their call-up.

*The Minister.*—The Minister of Labour and National Service; see s. 21 of the National Service (Armed Forces) Act, 1939 (32 Halsbury's Statutes 1059), and the Minister of National Service Order, 1939, S. R. & O., 1939, No. 1118.

*Questions connected with their being called up.*—The Minister might, for instance, wish to check a man's registration particulars; the authorities might be in process of calling up someone and might find that there were two people of the same name, or of similar names and registration numbers, and they might not be sure which was which. It was therefore desired to be able to ask educational authorities for men's names, registration numbers, home addresses etc. (see 437 H. of C. Official Report 737).

\* \* \* \* \*

### Supplemental

\* \* \* \* \*

**28. Commencement, citation and repeal.**—(1) This Act shall, except as otherwise expressly provided therein, come into force on the first day of January, nineteen hundred and forty-nine. [263]

(2) This Act may be cited as the National Service Act, 1947; and the National Service Acts, 1939 to 1946, and this Act may be cited together as the National Service Acts, 1939 to 1947. [264]

*National Service Acts, 1939 to 1946.*—These are the National Service (Armed Forces) Act, 1939 (32 Halsbury's Statutes 1041), the National Service (Armed Forces) Act, 1940 (33 Halsbury's Statutes 465), the National Service Act, 1941 (34 Halsbury's Statutes 270), the National Service (No. 2) Act, 1941 (34 Halsbury's Statutes 286), the National Service Act, 1942 (35 Halsbury's Statutes 231) and the National Service (Release of Conscientious Objectors) Act, 1946 (39 Halsbury's Statutes 775).

## ORDERS, CIRCULARS AND MEMORANDA

### SCHEMES OF DIVISIONAL ADMINISTRATION (NOTICES) REGULATIONS, 1947

S. R. & O., 1947, No. 148

January 27, 1947

1. The Minister of Education in pursuance of sub-paragraph (3) of paragraph 7 of Part III of the First Schedule to the Education Act, 1944, as amended by the Education Act, 1946, hereby prescribes as follows:—

(a) Notices in the form set out in the First Schedule to these Regulations shall be published in respect of every Scheme of Divisional Administration made by a Local Education Authority, other than a Scheme of Divisional Administration varying, revoking or supplementing an existing Scheme of Divisional Administration.

- (b) Notices in the form set out in the Second Schedule to these Regulations shall be published in respect of every Scheme of Divisional Administration made by the Council of a Borough or Urban District, which is an Excepted District, other than a Scheme of Divisional Administration varying, revoking or supplementing an existing Scheme of Divisional Administration.
- (c) Notices in the form set out in the Third Schedule to these Regulations shall be published in respect of every Scheme of Divisional Administration made by a Local Education Authority or a Council of a Borough or Urban District, which is an Excepted District, for varying, revoking or supplementing an existing Scheme of Divisional Administration :

Provided that the requirements of this Regulation may be deemed to have been fulfilled in any case if a form is used which is as near to the appropriate form hereinbefore prescribed as circumstances may permit. [265]

2. These Regulations shall have effect, as from the date on which they are sealed, in substitution for the Schemes of Divisional Administration (Notices) Provisional Regulations, 1946, but without prejudice to the previous operation of, or anything done under, those Regulations. [266]

3. The Interpretation Act, 1889, shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament. [267]

4. These Regulations may be cited as the Schemes of Divisional Administration (Notices) Regulations, 1947. [268]

\* \* \* \* \*

### FIRST SCHEDULE

#### EDUCATION ACTS, 1944 AND 1946

#### *Scheme of Divisional Administration*

.....Local Education Authority.

Notice is hereby given in accordance with the provisions of paragraph 7 of Part III of the First Schedule to the Education Act, 1944, as amended by the Education Act, 1946, that the Council of ..... as Local Education Authority have made a Scheme of Divisional Administration providing for the exercise by Divisional Executives on behalf of the Local Education Authority of certain functions relating to Primary and Secondary and Further Education. §

The Divisions in respect of which Divisional Executives are to exercise functions are as follows :—

Copies of the Scheme may be inspected at the office of the Local Education Authority at ..... or at \*..... and may be seen at all reasonable hours.

Any objections or representations with respect to the Scheme should be made to the Minister of Education, Belgrave Square, S.W.1, within one month beginning with the date of publication of this notice. †

Date of Publication ..... [269]

§ Strike out any words not applicable.

\* Suitable alternative places should be specified.

† Or such longer period as the Minister has determined to be appropriate, in any particular case.

## SECOND SCHEDULE

## EDUCATION ACTS, 1944 AND 1946

*Scheme of Divisional Administration*

..... Council.

Notice is hereby given in accordance with the provisions of paragraph 7 of Part III of the First Schedule to the Education Act, 1944, as amended by the Education Act, 1946, that the Council of the Borough of ..... which is an Excepted District, have made a Scheme of Divisional Administration for that district. The Scheme provides for the exercise by the Council, as Divisional Executive, on behalf of the Local Education Authority, of certain functions relating to Primary and Secondary and Further Education.†

Copies of the Scheme may be inspected at the Council Offices at ..... and at the Office of the Local Education Authority at ..... and may be seen at all reasonable hours.

Any objections or representations with respect to the Scheme should be made to the Minister of Education, Belgrave Square, S.W.1, within one month beginning with the date of publication of this notice.\*

Date of Publication ..... [270]

§ Strike out any words not applicable.

\* Or such longer period as the Minister has determined to be appropriate in any particular case.

## THIRD SCHEDULE

## EDUCATION ACTS, 1944 AND 1946

*Scheme of Divisional Administration*

..... Local Education Authority.

..... Council.

Notice is hereby given in accordance with the provisions of paragraph 7 of Part III of the First Schedule to the Education Act, 1944, as amended by the Education Act, 1946, that the

Council of ..... as Local Education Authority

Council of the Borough [Urban District] of ..... which is an Excepted District have made a Scheme of Divisional Administration for

varying

revoking the Scheme of Divisional Administration which was made by supplementing

the Council on ..... and approved by an Order of the Minister of Education dated .....

Copies of the Scheme may be inspected at the Office of the Local Education Authority at ..... or at \* ..... and may be seen at all reasonable hours.

Any objections or representations with respect to the Scheme should be made to the Minister of Education, Belgrave Square, S.W.1, within one month beginning with the date of publication of this notice.†

Date of Publication ..... [271]

\* Suitable alternative places should be specified, but if the Scheme has been made by the Council of a Borough or Urban District the Office of the Council will be a sufficient alternative place.

† Or such longer period as the Minister has determined to be appropriate in any particular case.

## ELECTIONS

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## STATUTES

HOUSE OF COMMONS (REDISTRIBUTION OF SEATS)  
ACT, 1947

(10 &amp; 11 Geo. 6, c. 10)

## PRELIMINARY NOTE

This Act, which received the Royal Assent on February 18, 1947, amends the rules as to the redistribution of parliamentary constituencies set out in the Third Schedule to the House of Commons (Redistribution of Seats) Act, 1944 (87 Halsbury's Statutes 389), so far as they relate to the application of the electoral quota. The rules as amended are set out in the Schedule to the present Act.

The principal changes are threefold. The first concerns the numerical relation of constituencies one with another. Rule 4 of the original rules provided that the electorate of a constituency returning a single member should not be greater or less than the electoral quota by more than approximately one-quarter of the quota, and it was only subject to the observance of this formula that Commissions were required to have regard to the conformity of parliamentary constituencies with local government boundaries (r. 5). In some cases, however, the provisional recommendations of the Commissions have shown that adherence to the formula would result in the dismemberment of local government areas and a severing of historic local ties. To avoid this, s. 1 of the present Act accordingly amends the rules in such a way that Commissions will no longer be tied to a mathematical formula in framing constituencies but, while still aiming at an approximate numerical equality, will be able to give prime consideration to the preservation, for parliamentary purposes, of local government areas unless adherence to that principle would result in such an excessive disparity between the electorate of a constituency and the electoral quota or between such electorate and those of neighbouring constituencies that a departure therefrom is desirable.

The second change concerns two-member constituencies. Rule 3 (1) of the original rules required such constituencies either to be divided or to return only one member if the electorate varied too greatly from the electoral quota. Here, again, the prescribed formula is abolished and Commissions are given a discretion, so that, if thought proper after local inquiry, constituencies of this kind may in certain cases remain undivided and yet continue to return two members.

The third change is consequential. As fresh reviews based on the amended rules will be necessary, a new enumeration date has been fixed for the purposes of the initial report of the Boundary Commissions under s. 3 of the Act of 1944 (87 Halsbury's Statutes 392). This is to be October 15, 1946, the date of publication of the annual register for that year (Representation of the People Act, 1945, s. 15; 88 Halsbury's Statutes 80). [272]

*An Act to relax the rules set out in the Third Schedule to the House of Commons (Redistribution of Seats) Act, 1944, so far as they relate to the application of the electoral quota and, in consequence thereof, to postpone the enumeration date for the purposes of the initial report under section three of that Act.*  
[273] [18th February, 1947.]

1. Amendment of 7 & 8 Geo. 6, c. 41.—(1) In the rules set out in the Third Schedule to the House of Commons (Redistribution of Seats) Act,

1944 (hereafter in this Act referred to as "the principal Act"), the following provisions shall cease to have effect, that is to say—

- (a) rule 4 (which limits the electorate of a constituency to not more than a quarter above or below the electoral quota and to which rule 5 as to conformity with local government boundaries is subject); and
- (b) in rule 3, paragraph (1) (which requires a two-member constituency to be divided or return a single member, if its electorate is not within the limits laid down by that paragraph for such a constituency) and sub-paragraph (i) of paragraph (3) (which is supplemental to the said paragraph (1)). [274]

(2) In lieu thereof, the following rule shall be inserted immediately after rule 5 of the said rules, that is to say,—

"5A.—(1) The electorate of any constituency shall be as near the electoral quota as is practicable having regard to the foregoing rules; and a Boundary Commission may depart from the strict application of the last foregoing rule if it appears to them that a departure is desirable to avoid an excessive disparity between the electorate of any constituency and the electoral quota, or between the electorate thereof and that of neighbouring constituencies in the part of the United Kingdom with which they are concerned.

(2) For the purposes of this rule a constituency returning two members shall be treated as two constituencies";

and paragraph (2) of the said rule 3 shall have effect with the substitution for the words "Any other two-member constituency shall be divided as aforesaid" of the words "Any two-member constituency shall be divided into or among two or more other constituencies, or shall be required to return a single member," and with the addition at the end thereof of the words "and, having regard to the two next following rules, that it is undesirable to require it to return a single member". [275]

(3) Accordingly the rules set out in the said Third Schedule shall have effect, with the amendments made by section thirty-three of the Representation of the People Act, 1945, and by this Act, as set out in the Schedule to this Act. [276]

(4) The amendments made by this section shall apply for the purposes of the initial report of the Boundary Commissions under section three of the principal Act, as well as to their subsequent reports under section four thereof; and accordingly the enumeration date for the purposes of the initial report shall be the fifteenth day of October, nineteen hundred and forty-six, instead of the fifteenth day of October, nineteen hundred and forty-five (being the day appointed by the Secretary of State under subsection (2) of section thirty-three of the Representation of the People Act, 1945). [277]

(5) Any increase occasioned by the passing of the last foregoing subsection in the expenses of the Commissions which, under paragraph 3 of Part II of the First Schedule to the principal Act, are to be defrayed out of moneys provided by Parliament shall also be so defrayed. [278]

*Effect of section.*—See the Preliminary Note, ante.

*House of Commons (Redistribution of Seats) Act, 1944, ss. 3, 4 and Sched. III.*—37 Halsbury's Statutes 392, 396 *et seq.*

*Representation of the People Act, 1945, s. 33.*—38 Halsbury's Statutes 92.

*Enumeration date.*—This was fixed as October 15, 1945, by the House of Commons (Boundary Commissions) (Appointed Day) Order, 1945, S. R. & O., 1945, No. 1289, made under s. 33 (2) of the Representation of the People Act, 1945 (38 Halsbury's Statutes 92). Since Boundary Commissions will have to make fresh reviews based on the amended rules, a new date is now fixed.

*Expenses of Commission.*—For paragraph 3 of Sched. I, Part II, to the 1944 Act, see 37 Halsbury's Statutes 395; under this provision the travelling and other expenses of the members of Boundary Commissions and the remuneration and expenses of the Assistant Commissioners, secretaries and other officers are to be defrayed out of moneys provided by Parliament.

**2. Short title and citation.**—This Act may be cited as the House of Commons (Redistribution of Seats) Act, 1947, and this Act and the principal Act as amended by the Representation of the People Act, 1945, may be cited together as the House of Commons (Redistribution of Seats) Acts, 1944 and 1947. [279]

*Principal Act.*—The House of Commons (Redistribution of Seats) Act, 1944 (37 Halsbury's Statutes 389) (see s. 1 (1), *ante*). The Act is amended by s. 33 of the Representation of the People Act, 1945 (38 Halsbury's Statutes 92).

## SCHEDULE

### Section 1

#### THE THIRD SCHEDULE TO THE PRINCIPAL ACT, AS AMENDED

##### RULES FOR DISTRIBUTION OF SEATS

1. The number of constituencies in the several parts of the United Kingdom set out in the first column of the following table shall be as stated respectively in the second column of that table—

<i>Part of the United Kingdom</i>	<i>No. of Constituencies</i>
Great Britain .. .. .	Not substantially greater or less than 591.
Scotland .. .. .	Not less than 71.
Wales .. .. .	Not less than 35.
Northern Ireland .. .. .	12.

2.—(1) A two-member constituency within the meaning of the next following rule which is not divided or required to return a single member as therein provided shall, subject to any adjustment of its boundaries made in accordance with that rule, continue to return two members.

(2) Every other constituency shall return a single member.

3.—(2) Any two-member constituency shall be divided into or among two or more other constituencies, or shall be required to return a single member, unless the Boundary Commission concerned, after causing a local inquiry to be held, are satisfied, having regard to any particular circumstances affecting the constituency, that it is undesirable so to divide it and, having regard to the two next following rules, that it is undesirable to require it to return a single member.

(3) Where the boundaries of a borough as last defined for the purpose of ascertaining the boundaries of a two-member constituency—

(a) do not include an area which is included within the boundaries of the borough as defined for local government purposes on the enumeration date; or

(b) include an area which is not included within the boundaries of the borough as so defined for local government purposes;

then if it is determined under paragraph (2) of this rule that the constituency shall not be divided as aforesaid, the boundaries of the borough shall be redefined, for the purpose of ascertaining the boundaries of the constituency, so as to include or exclude that area, as the case may be.

(4) In the last foregoing paragraph, for references to a borough there shall be substituted, in its application to Scotland, references to a county of a city and, in its application to Northern Ireland, references to a county.

(5) In this rule the expression "two-member constituency" means a constituency returning two members on the enumeration date.

5.—(1) So far as is practicable having regard to the foregoing rules—

(a) in England and Wales,—

(i) no county or any part thereof shall be included in a constituency which includes the whole or part of any other county or the whole or part of a county borough or metropolitan borough;

(ii) no county borough or any part thereof shall be included in a constituency which includes the whole or part of any other county borough or the whole or part of a metropolitan borough;

(iii) no metropolitan borough or any part thereof shall be included in a constituency which includes the whole or part of any other metropolitan borough ;

(iv) no county district shall be included partly in one constituency and partly in another ;

(b) in Scotland,—

(i) no county or burgh shall be included partly in one parliamentary county and partly in another, or partly in a parliamentary county and partly in a parliamentary borough ;

(ii) no burgh other than a county of a city shall be included partly in one constituency and partly in another ;

(c) in Northern Ireland, no county district shall be included partly in one constituency and partly in another.

(2) In paragraph (1) of this rule the following expressions have the following meanings, that is to say :—

“ county ” means, in sub-paragraph (a), an administrative county other than the county of London, and, in sub-paragraph (b), a county exclusive of any burgh situate therein ;

“ county borough ” has the same meaning as in the Local Government Act, 1933 ;

“ county district ” has, in sub-paragraph (a), the same meaning as in the Local Government Act, 1933, and, in sub-paragraph (c), the same meaning as in the Local Government (Ireland) Act, 1898.

5A.—(1) The electorate of any constituency shall be as near the electoral quota as is practicable having regard to the foregoing rules ; and a Boundary Commission may depart from the strict application of the last foregoing rule if it appears to them that a departure is desirable to avoid an excessive disparity between the electorate of any constituency and the electoral quota, or between the electorate thereof and that of neighbouring constituencies in the part of the United Kingdom with which they are concerned.

(2) For the purposes of this rule a constituency returning two members shall be treated as two constituencies.

6. A Boundary Commission may depart from the strict application of the last two foregoing rules if special geographical considerations, including in particular the size, shape and accessibility of a constituency, appear to them to render a departure desirable.

7. Nothing in rules 2 to 6 of these rules shall apply to the City of London, but that City as constituted at the commencement of this Act shall continue to be a separate constituency, and shall return either two members or a single member as may be provided by the Act giving effect (whether with or without modifications) to the recommendations contained in the reports submitted by the Boundary Commissions under section three of this Act.

8.—(1) For the purpose of these rules—

(a) the expression “ electoral quota ” means—

(i) in the application of these rules to a constituency in Great Britain, a number obtained by dividing the electorate for Great Britain by the number of constituencies in Great Britain existing on the enumeration date, or, in applying these rules for the purpose of section three of this Act, by the number of such constituencies existing at the commencement of this Act, namely five hundred and ninety-one ; and

(ii) in the application of these rules to a constituency in Northern Ireland, a number obtained by dividing the electorate for Northern Ireland by the number of constituencies in Northern Ireland existing on the enumeration date ;

(b) the expression “ electorate ” means—

(i) in relation to a constituency or any part thereof, the number of persons whose names appear on the parliamentary register of electors in force on the enumeration date under the Representation



of the People Acts for the constituency or that part thereof, or, if no such register is then so in force, the last such register which was so in force; and

(ii) in relation to Great Britain or Northern Ireland, the aggregate electorate as hereinbefore defined of all the constituencies therein.

(2) In reckoning for the purposes of these rules the number of constituencies in any part of the United Kingdom, a constituency returning two members shall be reckoned as two constituencies. [280]

*General note.*—This Schedule comprises Sched. III to the House of Commons (Redistribution of Seats) Act, 1944 (37 Halsbury's Statutes 389), as amended by s. 33 (3) of the Representation of the People Act, 1945 (38 Halsbury's Statutes 92), and by s. 1 of the present Act. For the effect of the amendments made by the present Act, see the Preliminary Note, *ante*.

## ORDERS, CIRCULARS AND MEMORANDA

### ELECTORAL REGISTRATION REGULATIONS, 1947 \*

*S. R. & O.*, 1947, No. 1646

*July 2, 1947*

In pursuance of the powers conferred upon me by the Parliamentary Electors (War-Time Registration) Acts, 1943 and 1944, the Representation of the People Act, 1945, and the Elections and Jurors Act, 1945, I [*i.e.*, the Secretary of State] hereby make the following Regulations:—

1.—(1) These regulations may be cited as the Electoral Registration Regulations, 1947.

(2) These regulations shall come into force on the first day of August, nineteen hundred and forty-seven. [281]

2. For paragraphs (1) and (2) of regulation 22 of the Electoral Registration Regulations, 1946, there shall be substituted the following paragraphs:—

“(1) It shall be the duty of the registration officer, within the time allowed by these regulations, to prepare and publish a civilian residence electors list, a business premises electors list, a ratepayers electors list and a service electors list, and every such list, other than a civilian residence electors list compiled in accordance with sub-paragraph (b) of the next succeeding paragraph of this regulation, shall be in the form to be adopted for the corresponding part of the register for the constituency.

(2) The civilian residence electors list—

(a) shall contain the name and qualifying addresses of all persons who appear to the registration officer, from information furnished to him in accordance with national registration regulations, to be qualified to be registered in the civilian residence register, and

(b) shall, elsewhere than in Scotland, consist of—

*List A*—a copy of the civilian residence register in force for the unit,

*List B*—a list of newly qualified electors, that is to say, persons who are qualified for registration in the civilian residence register in respect of qualifying addresses for which they are not registered in the civilian residence register in force, and

\* These Regulations having lain before both Houses of Parliament in accordance with section 20 of the Parliamentary Electors (War-Time Registration) Act, 1943, section 37 of the Representation of the People Act, 1945, and subsection (1) of section 18 of the Elections and Jurors Act, 1945, were approved by resolution of both Houses of Parliament on July 30, 1947.

*List C*—a list of persons no longer qualified as electors, that is to say, persons who, being registered in respect of qualifying addresses in the civilian residence register in force, have ceased to be qualified for registration in the civilian residence register in respect of those addresses :

Provided that where since the publication of the register in force the area of a registration unit has been altered, the area of that unit may for the purpose of the publication of the civilian residence electors list be deemed to be the area of the unit as constituted at the date of the publication of the register in force :

Provided also that a person whose name is entered both in *List A* and in *List C* shall not, by reason only of those entries, be entitled to object under regulation 26 of these regulations to the registration of any person.” [282]

3. For paragraph (b) of regulation 24 of the said Regulations there shall be substituted the following paragraph :—

“(b) (i) the civilian residence and service electors lists shall be published in England and Wales on the twelfth day of August, in Scotland on the fifteenth day of August and in Northern Ireland on the nineteenth day of August ;

(ii) the business premises and ratepayers electors lists shall be published not later than the twenty-ninth day of August ”. [283]

4. For paragraph (4) of regulation 30 of the said Regulations there shall be substituted the following paragraph :—

“(4) A copy of the register shall, on publication, be furnished by a registration officer—

(a) in England, Wales or Northern Ireland to the Secretary of State and the British Museum ; and

(b) in Scotland to the returning officer, the British Museum and the National Library of Scotland ”. [284]

5. Paragraph (d) of regulation 59 of the said Regulations shall be omitted. [285]

\* \* \* \* \*

### EXPLANATORY NOTE

*(This Note is not part of the Regulations, but is intended to indicate their general purport.)*

*The purpose of the amendments contained in these regulations is to provide—*

(a) *for the publication of the civilian residence electors lists in England, Wales and Northern Ireland in the form of Lists A, B and C as under the pre-war procedure ;*

(b) *for slightly altered dates of publication of the civilian residence and service electors lists in England and Wales and in Northern Ireland ;*

(c) *for the supply of copies of the register by a registration officer, in England, Wales or Northern Ireland, to the Secretary of State and the British Museum, and, in Scotland, to the returning officer, the British Museum and the National Library of Scotland.*

# ELECTRICITY SUPPLY

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## STATUTES

### ELECTRICITY ACT, 1947

(10 & 11 Geo. 6, c. 54)

#### PRELIMINARY NOTE

This Act, which received the Royal Assent on August 13, 1947, is the first major Act dealing with the structure of the electricity supply industry since the Electric Lighting Act, 1882 (7 Halsbury's Statutes 686).

In view of the fundamental character of the changes both on the generating and supply sides of the industry a short account of the historical background may assist readers in understanding the present reforms.

It was in 1881 that electricity was first employed as a public service in a small urban area in the County of Surrey. At first, attention was paid almost exclusively to lighting and in the closing years of the century a great number of local authorities, under the machinery of the Electric Lighting Acts, 1882 and 1888 (7 Halsbury's Statutes 686, 702), were granted an exclusive right of supply in their own areas. Side by side with this development went the formation of private companies to promote the extension of electricity supply in other areas; but though companies of this kind were given exclusive powers analogous to those of local authorities, provision was made by the Electric Lighting Act, 1888, s. 2 (7 Halsbury's Statutes 702), for a possible later buying-out of the undertakings by the appropriate local authorities.

Early in the present century, however, electricity came to be used to an ever-increasing extent for the large-scale supply of power to industry and in the decade beginning with 1901 a number of private Acts were passed granting in perpetuity the exclusive right of large-scale supply for power purposes to specially formed Power Companies, no provision for compulsory buying-out by local authorities being made, except where domestic retail supply was also involved and the earlier compulsory purchase provisions became applicable.

Soon after the end of the First World War Parliament passed the Electricity (Supply) Act, 1919 (7 Halsbury's Statutes 754), ss. 5-8 of which provided for the establishment of Joint Electricity Authorities (such as the London and Home Counties Joint Electricity Authority) to operate generating stations and main transmission lines and to supply bulk electricity to large-scale distributors. At the same time Electricity Commissioners were constituted with the object of "promoting, regulating and supervising the supply of electricity" and were granted wide powers to carry out those purposes. Many of the powers of the Board of Trade became exercisable by the Commissioners on whom additional powers and duties were later conferred by amending statute. Nevertheless, little success attended their efforts, many of the anomalies that had led to their appointment continuing throughout the inter-war period.

In particular, there was a marked lack of standardisation, not only in voltages and frequencies but in supply systems and prices, and, apart altogether from serious local variations of tariff, it was felt that the general level of charges might well be reduced by reforming the system under which electricity was generated. As a result, the Electricity (Supply) Act, 1926 (7 Halsbury's Statutes 792), established the Central Electricity Board, which, endowed with wide powers, carried through over a period of six years the inauguration of the "grid system" by concentrating generation in a small number of selected stations and distributing energy through

a network of main transmission lines. In general, however, the Board did not itself own generating stations but took over the product of the remaining stations and sold it, as it were, to "wholesalers" for retailing to the actual consumers. Through the efforts of the Central Electricity Board charges were reduced and the generating side of the electricity industry was placed on a much more satisfactory footing.

This improvement in the system of generation was not, however, reflected in any marked degree in the matter of distribution, where the lack of co-ordination, local divergences and other defects which historical causes had induced continued in large measure. When the McGowan Committee was appointed in 1935 to investigate the possibility of reorganising distribution, there were as many as 635 electricity undertakings, of which as many as 82 operated in the London area, nearly all with varying tariffs; local authorities and private companies were operating side by side; the old distinction between lighting and power supplies remained; a system of holding and subsidiary companies had grown up and the options of local authorities to purchase lighting undertakings were falling in. Many local authorities were considering purchase, even though their rights applied only to part of the areas of private companies or to part only of their functions, with the possibility of a further increase in the number of supply authorities in consequence.

To remedy these and other defects a Bill was introduced in Parliament in January, 1947, which after twenty-four days' proceedings in Standing Committee, in the course of which over 600 amendments were put down, became the present Act in the following August. The Act provides in a comprehensive manner for the co-ordination under public ownership of the whole of the electricity supply industry. The provisions constituting the Central Electricity Board are repealed (s. 57 and Sched. V), and the Board itself is to come to an end along with other "authorised undertakers" (s. 14 (11)), power is given to dissolve the Electricity Commissioners (s. 58) and a Board to be known as the British Electricity Authority (referred to as "the Central Authority") is set up under the Minister of Fuel and Power (s. 1) to maintain and develop, as from April 1, 1948 (S.I. 1948 No. 217) an efficient, co-ordinated and economical system of supply for the whole of Great Britain except the North of Scotland district where the Hydro-Electric Development (Scotland) Act, 1943 (6 & 7 Geo. 6, c. 32) as modified by the present Act, continues to apply. Lord Citrine is the first chairman of the new Authority.

The extensive powers of the Central Authority as detailed in s. 1 include the actual generating of electricity, the provision of "wholesale" supplies for "retailing," the co-ordinating and general control of supplies from the Area Boards (see *post*), and in exceptional cases the provision of supplies to the actual consumers. Power is also given to fix tariffs on sales to Area Boards (s. 37); to borrow in accordance with the terms of s. 39; to conduct research in electricity supply; to make provision for increasing the skill of electrical workers and the efficiency of their equipment, with power to manufacture electrical plant and fittings (though not for export) in case difficulty should be experienced in negotiations with existing manufacturers; and to sell, hire or otherwise supply plant and fittings, with a general residuary clause validating other necessary acts (s. 2). The Authority is directly charged with investigating the possibilities of district heating (s. 50).

In addition, the Authority may, by authorisation of the Minister, purchase compulsorily any land required for their purposes including "wayleaves," underground or otherwise. The procedure is to be that applicable to local authorities under the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Halsbury's Statutes 52), except that the speedy procedure designed to meet cases of great urgency is not to apply (s. 9). The Authority is empowered to promote and oppose Bills in Parliament (s. 10), and the two succeeding sections provide for its operation without exemption from taxation or protection as a public authority in legal proceedings.

The Central Authority is to be a body corporate consisting of a chairman, four to six persons of experience selected by the Minister of Fuel and Power, four chairmen of Area Boards (see *post*), appointments being made in rotation, and the Chairman of the North of Scotland Board. Detailed provision as to the organisation of the Central Authority may be made by regulations of the Minister (s. 3).

S. 5 of the Act provides for control of the Central Authority by the Minister

in the national interest by means of general directions and by general programmes of reorganisation and development agreed between the Authority and the Minister, while provision is made for the latter to be kept fully informed of the Board's activities.

The general lines of the financial policy to be followed by the Central Authority are laid down in Part III of the Act. At the end of each financial year, the Central Authority is to present to the Minister an annual report, a copy of which is to be laid before Parliament (s. 8), and by s. 46 provision is also made for the publication of audited accounts in prescribed form.

Nevertheless, care has been taken to secure the maximum of decentralisation so that consumers may not feel that public control is divorced from local reality. The Act itself provides for the establishment, for the areas indicated in broad terms in Sched. I, of fourteen Area Boards which, with the North of Scotland Board, will be self-governing (subject to general directions (ss. 6 and 36 (2)) on all matters including finance). The principles on which the areas have been laid down are set out in a White Paper (Cmd. 7007) entitled "Electricity Supply Areas," published at the same time as the Bill. The Minister also stated, in introducing the Bill for Second Reading in the House of Commons on February 3, 1947, that the Area Boards would divide their areas into districts and appoint appropriate officers (482 H. of C. Official Report 1415).

The powers of Area Boards in their particular spheres, which are to be exactly limited by order of the Minister by reference to a map, are largely similar to those of the Central Authority, special provision being made by s. 1 (4) for reciprocal arrangements between Area Boards and for supply agreements between such Boards and independent distributors. Detailed provision is made as to staffing and pension rights in the case of all the new authorities (ss. 53 and 54).

Like the Central Authority, Area Boards are to be bodies corporate. Each is to consist of a chairman and five to seven other members of experience (appointed not by the Central Authority but directly by the Minister after consultation with that Authority), and the Chairman for the time being of the Consultative Council for the Area (s. 3 (3)).

These Consultative Councils, to be established under s. 7, represent a further effort to bridge the gap between executive direction of the industry and the actual needs of the consumer. Each Council is to consist of twenty to thirty representative persons, whose appointment again lies directly with the Minister, the Councils' functions being wider than those of consumers' councils. They will be associated with the work of the Area Boards, will be advised of its plans and will examine those plans in the light of their local knowledge and experience. However, as in the case of the Central Fire Brigades Advisory Council, established under the Fire Services Act, 1947, title FIRE PROTECTION, *post*, the actual power of such bodies is not great.

So much for the comparatively simple structure of the new organisation. The provision for transferring the industry to the new Authorities now falls to be discussed. This is less easy; indeed, it must be so if full provision is to be made for the widely divergent circumstances in which the transfer is to take effect. S. 13 provides for the vesting in the appropriate Authorities, on April 1, 1948 (see S.I. 1948 No. 217), of the assets and liabilities of "authorised undertakers" under the Electricity (Supply) Acts, 1882 to 1936 (see note to s. 8), of power station companies whose business consists wholly or mainly in constructing, owning, or operating a generating station or stations for supplying electricity to authorised undertakers; and certain holding companies by reason of their subsidiaries being either authorised undertakers or power station companies. Special provisions determine the position of non-statutory undertakings to which s. 48 applies.

The "vesting date" to be appointed was to be a date on or after April 1, 1948, not being less than six months after the establishment of the main personnel of the Central Authority nor less than three months after the similar establishment of all the Area Boards and the definition by Order of their areas (s. 14 (1)). In general, the property to be transferred will be all property, rights, liabilities and obligations of the transferring body, but special provisions apply to special circumstances. In the case of local authorities, for example, s. 15 (1) provides that the vesting provisions of the Act are to apply only to property held or used by such authorities wholly or mainly in their capacity as authorised undertakers and to rights,

liabilities and obligations acquired or incurred in that capacity. Loans, however, are not to be transferred but are to be serviced by the Central Authority (ss. 15 (5), 22 (2)). S. 16 gives local authorities, on somewhat similar lines to the Lands Clauses Consolidation Act, 1845, ss. 128, 129 (2 Halsbury's Statutes 1159), a right of pre-emption on the disposal of land so transferred in the event of its becoming superfluous. Detailed provision is also made in the case of "composite companies" supplying gas or water in addition to electricity (s. 17). Agreements or leases made or varied on or after November 19, 1945, either "with an unreasonable lack of prudence" (e.g. in anticipation of the Act) or where not reasonably necessary, may, by s. 18, be disclaimed.

The compensation provisions may conveniently be divided into three categories: first, as to private undertakings; secondly, as to local authorities, and thirdly, as to composite companies. In the first case, the holders of securities in private undertakings whose assets and liabilities are transferred by the Act are to be compensated by the issue to them, in accordance with s. 40 of, and Sched. III to, the Act, of stock guaranteed by the Treasury, to be known as British Electricity Stock, of an amount equal to the average market value of the securities on specified dates, special provision being made for unquoted securities and cases where recent issues have been made (s. 20). S. 14 (11) provides that private undertakings affected are to be dissolved on April 1, 1948, and accordingly a device has been adopted of arranging for "stockholders' representatives" to represent the interests of stockholders in matters of compensation (s. 21).

In the second case, local authorities are in a somewhat different position. Only about one in five regarded their electricity undertakings as a means of contributing towards the relief of rates; the transfer is merely from one form of public ownership to another, and the only basis of compensation is therefore the transfer of liabilities to the new Authorities; as stated above this will include servicing the net outstanding debt of local authorities attributable to their electricity supply undertakings (s. 22). Consequential adjustments of accounts are to be made. Nevertheless, by s. 23 a global sum of £5,000,000 has been set aside as compensation for severance in a broad sense, while further compensation may be paid in respect of recent capital works (s. 24).

To meet the third case, that of the composite companies mentioned in Sched. II, Part II, s. 25 makes detailed provision for severing the electricity undertaking from other activities and paying compensation accordingly on the basis applicable to private companies.

Officers and servants of transferring bodies who are detrimentally affected by the transfer are to receive compensation, as are members of the Central Electricity Board and the Electricity Commissioners and their officers in like circumstances (s. 55; see also s. 59).

Ss. 26-30 are designed to secure that the assets of the undertakings to be transferred are adequately protected during the transitional period between "contract" and "completion." Disclaimer of agreements and leases has already been mentioned and transactions after January 10, 1947, the date of publication of the Bill, which have resulted in dissipating the assets of an undertaking may be reopened, subject to safeguards against the improper use of this right (s. 29). To avoid uncertainty, provision is made whereby transactions may be submitted to the Minister and if approved will no longer be subject to challenge (s. 29 (1), proviso (iv)).

In many instances of possible dispute, e.g. as to what is and what is not a power station company or holding company to which the transfer provisions apply (s. 34), resort is to be had to arbitration and a special Electricity Arbitration Tribunal is established for that purpose (ss. 31-33).

There are numerous ancillary and consequential provisions on a variety of subjects. Among the financial sections are provisions for the fixing and variation of tariffs in which neither undue preference nor undue discrimination is to be shown (s. 37), and there is a provision designed to ensure that the Central Authority and the Area Boards, in the aggregate and "taking one year with another," are not run at a loss (s. 36 (1)). Among the miscellaneous matters dealt with are the supply of electricity to railways (s. 49), powers for the Minister to make safety regulations (s. 60), and provision for the holding of public inquiries where necessary (s. 66).

The scheme of nationalisation provided by the Act has also necessitated numerous repeals and amendments of the existing law, for which reference should be made to s. 57 and Schedules IV and V. [286]

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*An Act to provide for the establishment of a British Electricity Authority and Area Electricity Boards and for the exercise and performance by that Authority and those Boards and the North of Scotland Hydro-Electric Board of functions relating to the supply of electricity and certain other matters, for the transfer to the said Authority or any such Board as aforesaid of property, rights, obligations and liabilities of electricity undertakers and other bodies; to amend the law relating to the supply of electricity; to make certain consequential provision as to income tax; and for purposes connected with the matters aforesaid.* [287]

[13th August 1947.]

## PART I

### BRITISH ELECTRICITY AUTHORITY AND AREA ELECTRICITY BOARDS

**1. Main functions of Electricity Boards.**—(1) There shall be established an Authority, to be known as the British Electricity Authority, and it shall be the duty of that Authority as from the vesting date to develop and maintain an efficient, co-ordinated and economical system of electricity supply for all parts of Great Britain except the North of Scotland District, and for that purpose—

- (a) to generate or acquire supplies of electricity;
- (b) to provide bulk supplies of electricity for the Area Boards hereinafter established for distribution by those Boards;
- (c) to co-ordinate the distribution of electricity by Area Boards and to exercise a general control over the policy of those Boards; and
- (d) to provide supplies of electricity for consumers for whom the British Electricity Authority are required by any provision of this Act or may for the time being be authorised by the Minister to provide such supplies. [288]

(2) There shall be established Boards, to be known by the names mentioned in the first column of the First Schedule to this Act, for the areas which are described in general terms in the second column of that Schedule and are to be defined by orders made under this Part of this Act, and it shall be the duty of every such Board as from the vesting date to acquire from the British Electricity Authority bulk supplies of electricity and to plan and carry out an efficient and economical distribution of those supplies to persons in their area who require them. [289]

(3) In this Act and in any amendment made by this Act in any other enactment the British Electricity Authority is referred to as “the Central Authority” and the Boards established under the last foregoing subsection are referred to as “Area Boards” and the Central Authority and the Area

Boards, together with the North of Scotland Board, are referred to as "Electricity Boards." [290]

(4) Any Area Board may—

- (a) by agreement with any other Area Board and with the approval of the Central Authority, give to or acquire from that other Area Board bulk supplies of electricity ;
- (b) by agreement with any person other than an Electricity Board and with the approval of the Central Authority, acquire bulk supplies of electricity from that person ; and
- (c) by agreement with any other Area Board, supply electricity to consumers in the area of that other Area Board.

If any Area Board are unable to obtain the agreement of another Area Board under paragraph (c) of this subsection, they may apply to the Central Authority for an authorisation to supply electricity to consumers in such part of the area of that other Area Board as may be specified in the authorisation, and, if the Central Authority gives such an authorisation, the first-named Area Board shall have power to supply electricity in accordance therewith. [291]

(5) The provisions of the last foregoing subsection shall apply in relation to the North of Scotland Board and the North of Scotland District as if that Board were an Area Board and that District were the area of an Area Board, subject to the modification that any approval of the acquisition of bulk supplies of electricity from any person in the North of Scotland District and any authorisation for the supply of electricity by an Area Board to consumers in the North of Scotland District shall be given by the Secretary of State. [292]

(6) In exercising and performing their functions the Electricity Boards shall, subject to and in accordance with any directions given by the Minister or Secretary of State under this Part of this Act—

- (a) promote the use of all economical methods of generating, transmitting and distributing electricity ;
- (b) secure, so far as practicable, the development, extension to rural areas and cheapening of supplies of electricity ;
- (c) avoid undue preference in the provision of such supplies ;
- (d) promote the simplification and standardisation of methods of charge for such supplies ;
- (e) promote the standardisation of systems of supply and types of electrical fittings ;

and shall also promote the welfare, health and safety of persons in the employment of the Boards. [293]

(7) As from the vesting date, the powers and duties of the North of Scotland Board under the Act of 1943, with regard to the generation of electricity by water power shall extend to the generation of electricity by any other means, and the North of Scotland District shall be altered so as to include the county of the city of Dundee, the whole of the counties of Angus and Perth and the county of Kinross, and so as to exclude the parish of Rosneath in the county of Dunbarton. [294]

*Vesting date.*—Such date on or after April 1, 1948, not being less than six months after the establishment of the British Electricity Authority nor less than three months after the establishment of all the Area Boards and the definition by order of their areas, as the Minister of Fuel and Power may by order appoint. April 1, 1948, has been so appointed (ss. 14 (1) and 67 (1), *post*, and see the notes thereto).

*To generate or acquire supplies of electricity.*—The Parliamentary Secretary to the Ministry of Fuel and Power said at the Committee Stage of the Bill : " It is our view that the Central Authority will in general own and operate the generating stations, but there may be cases where they would find it convenient to delegate the power to run these stations to an Area Board. We do not think such cases will be very common, although there are one or two that we have in mind " (H. of C. Official Report, S.C.E., March 11, 1947, col. 207).

*Orders.*—For the general provisions as to orders, see s. 64, *post*. All orders made under

Part I of the Act, not being orders required to be laid before Parliament in draft or orders subject to special parliamentary procedure, are to be laid before Parliament under s. 64 (3), *post*; but see note thereto.

*Central Authority and Area Boards.*—For the constitution of these bodies, see s. 3, *post*.

*Definitions.*—For definitions of "bulk supplies," "functions," "electrical fittings," "North of Scotland Board," and "the Act of 1943," see s. 67 (1), *post*.

**2. Additional functions of Electricity Boards.**—(1) It shall be the duty of the Central Authority and of any Area Board, in so far as they may be requested by the Central Authority to do so, to conduct research into matters affecting the supply of electricity, and the Central Authority and, in so far as they may be so requested, any Area Board may assist other persons conducting such research. [295]

(2) It shall be the duty of the Central Authority and every Area Board, in consultation with any organisation appearing to them to be appropriate, to make provision for advancing the skill of persons employed by them and for improving the efficiency of their equipment and the manner in which that equipment is to be used, including provision by them and the assistance of the provision by others of facilities for training and education. [296]

(3) The Central Authority shall have power—

- (a) to manufacture electrical plant and electrical fittings;
- (b) to sell, hire or otherwise supply electrical plant and electrical fittings and to instal, repair, maintain or remove any electrical plant and electrical fittings; and
- (c) to carry on all such other activities as it may appear to the Authority to be requisite, advantageous, or convenient for them to carry on for or in connection with the performance of their duties under the foregoing section or with a view to making the best use of any assets vested in them by or under this Act:

Provided that this subsection shall not empower the Central Authority to manufacture electrical plant or electrical fittings for export. [297]

(4) Any Area Board shall have power—

- (a) to sell, hire or otherwise supply electrical fittings and to instal, repair, maintain or remove any electrical fittings; and
- (b) to carry on all such other activities as it may appear to the Board to be requisite, advantageous or convenient for them to carry on for or in connection with the exercise and performance of their functions under the foregoing section or with a view to making the best use of any assets vested in them by or under this Act:

Provided that nothing in this subsection shall empower an Area Board to exercise or perform any of the functions referred to in paragraph (a) of the last foregoing subsection or paragraph (b) of the last foregoing subsection so far as it relates to the sale, hire or supply of electrical plant. [298]

(5) The Central Authority and any Area Board shall have power to do any thing and to enter into any transaction (whether or not involving the expenditure, the borrowing in accordance with the provisions of this Act or the lending of money, the acquisition of any property or rights or the disposal of any property or rights not in their opinion required for the proper exercise or performance of their functions) which in their opinion is calculated to facilitate the proper performance of their duties under the foregoing section or the exercise or performance of any of their functions under the foregoing provisions of this section, or is incidental or conducive thereto, but nothing in this subsection shall be taken as empowering an Area Board to exercise or perform any functions specifically excluded from the last foregoing subsection. [299]

(6) Subject to the approval of the Minister, the Central Authority may authorise any Area Board to exercise or perform on behalf of the Central Authority any of the functions of that Authority which are to be exercised or

performed wholly or mainly in the area of the Area Board (not including any functions specifically excluded from subsection (4) of this section) and any such authorisation may be subject to conditions and limitations and may be so framed as to empower the Area Board to exercise or perform any of the functions delegated to them through agents. [300]

(7) Any Electricity Board may, by agreement with any other Electricity Board, use for the purposes of any of their functions any works, plant or other property of that other Board, and, if it appears to the Minister that such use cannot be obtained by agreement and is required for the purpose of securing efficient and economical services, he may by order authorise such use on such terms and conditions (including the payment of money) as he may determine. [301]

(8) Subsections (1), (2), (3) and (5) of this section shall, subject to the provisions of the Act of 1943, apply to the North of Scotland Board in like manner as they apply to the Central Authority, subject to the following modifications :—

- (a) for the reference in subsection (5) to borrowing in accordance with the provisions of this Act there shall be substituted a reference to borrowing in accordance with the Act of 1943 ; and
- (b) other references to this Act and references to the foregoing section shall include references to the Act of 1943 ;

and any order under the last foregoing subsection affecting the North of Scotland Board shall be made by the Minister and the Secretary of State jointly. [302]

(9) For the avoidance of doubt it is hereby declared that the foregoing provisions of this Act relate only to the capacity of Electricity Boards as statutory corporations, and nothing in those provisions shall be construed as authorising the disregard by any such Board of any enactment or rule of law. [303]

*Effect of section.*—This section details various powers of the Central Authority additional to those covered by the preceding section. For further provisions as to research, see s. 50, *post*.

*Central Authority.*—The British Electricity Authority (s. 1 (3), *ante*). For the constitution of this body, see s. 3, *post*.

*Sub-s. (1).*—The Central Authority is directed to conduct research into matters of electricity supply and is empowered, though not directed, to assist other research agencies. Area Boards must themselves conduct research and may assist research agencies, in each case so far as requested by the Central Authority.

*Such other activities as may appear requisite.*—*E.g.* holding a publicity campaign in connection with the development of electricity, or selling waste clinker and ashes from generating stations (see H. of C. Official Report, S.C.E., March 8, 1947, cols. 163-164).

*Best use of any assets.*—Under the terms of the Act there will vest in the Central Authority certain assets which are not strictly connected with their duties as laid down, *e.g.* on transfer from composite companies. In such cases the intention is to provide that the assets shall be properly utilised pending disposal (see H. of C. Official Report, S.C.E., March 6, 1947, col. 164).

*Order of the Minister.*—For the general provisions as to orders, see s. 64, *post*. Orders of the Minister of Fuel and Power under sub-s. (7) of this section are to be laid before Parliament under s. 64 (3), *post* ; but see note thereto.

*Definitions.*—As to "Area Board," see s. 1 (3), *ante*. For definitions of "electrical plant," "electrical fittings," "functions," "Act of 1943," "North of Scotland Board" and "enactment," see s. 67 (1), *post*.

**3. Constitution of Central Authority and Area Boards.**—(1) The Central Authority and every Area Board shall be a body corporate with perpetual succession and a common seal and power to hold land without licence in mortmain. [304]

(2) The Central Authority shall be constituted as follows :—

- (a) the chairman and not less than four or more than six other members shall be appointed by the Minister from amongst persons appearing to him to be qualified as having had experience of, and having shown capacity in, the generation and supply of electricity,

- industrial, commercial or financial matters, applied science, administration, or the organisation of workers ;
- (b) four other members shall be appointed by the Minister from amongst the persons for the time being holding the office of chairman of an Area Board, and such appointments shall be made from the Area Boards in rotation ; and
  - (c) there shall be one other member who shall be the person for the time being holding the office of chairman of the North of Scotland Board :

Provided that, until the Area Boards have been established, the Central Authority shall be deemed to be properly constituted notwithstanding that the members to be appointed under paragraph (b) of this subsection have not been appointed or have not all been appointed. [305]

(3) Every Area Board shall be constituted as follows :—

- (a) the chairman and not less than five or more than seven other members shall be appointed by the Minister after consultation with the Central Authority from amongst persons appearing to the Minister to be qualified as having had experience of, and having shown capacity in, electricity supply, local government, industrial, commercial, agricultural or financial matters, applied science, administration, or the organisation of workers ; and
- (b) there shall be one other member who shall be the person for the time being holding the office of chairman of the Consultative Council established under the following provisions of this Part of this Act for the area of the Area Board :

Provided that, until the Consultative Council has been established, an Area Board shall be deemed to be properly constituted notwithstanding that the Board does not include the member referred to in paragraph (b) of this subsection and, during any period before the vesting date, an Area Board shall be deemed to be properly constituted if the chairman and three other members have been appointed. [306]

(4) A person shall be disqualified for being appointed or being a member of the Central Authority or any Area Board so long as he is a member of the Commons House of Parliament. [307]

(5) The Minister shall appoint one or more of the members of the Central Authority to be deputy chairman or deputy chairmen of that Authority, and shall, after consultation with the Central Authority, appoint one of the members of each of the Area Boards to be deputy chairman of that Board. [308]

(6) There shall be paid to the members of the Central Authority and to the members of each of the Area Boards such remuneration (whether by way of salaries or fees) and such allowances as may be determined by the Minister with the approval of the Treasury, and, on the retirement or death of any member in whose case it may be so determined to make such provision, such a pension to or in respect of that member as may be so determined.

Any such remuneration, allowances and pensions as foresaid shall be paid by the Central Authority or, as the case may be, the Area Board concerned. [309]

(7) The Minister may make regulations with respect to—

- (a) the appointment of, and the tenure and vacation of office by, the members of the Central Authority and any Area Board ;
- (b) the quorum, proceedings, meetings and determinations of the Central Authority and any Area Board ;
- (c) the execution of instruments and the mode of entering into contracts by and on behalf of the Central Authority or any Area Board, and



the proof of documents purporting to be executed, issued or signed by the Central Authority or any Area Board or a member or officer thereof; and

(d) any other matters supplementary or incidental to the matters aforesaid for which provision appears to the Minister to be necessary or expedient. [310]

(8) Subject to the provisions of any regulations made under the last foregoing subsection, the Central Authority and every Area Board shall have power to regulate their own procedure. [311]

*Effect of section.*—This section deals with the constitution of the Central Authority and Area Boards as referred to in the Preliminary Note, *ante*. The majority of the members of the Area Boards are to be appointed by the Minister and not by the Central Authority, thus ensuring a greater measure of ministerial responsibility for acts of the Area Boards. The Rt. Hon. Lord Citrine has been appointed the first chairman of the Central Authority.

*Central Authority.*—The British Electricity Authority (s. 1 (3), *ante*).

*Licence in mortmain.*—The Mortmain and Charitable Uses Acts, 1888 and 1891 (2 Halsbury's Statutes 385, 396), as amended by the Mortmain and Charitable Uses Act Amendment Act, 1892 (2 Halsbury's Statutes 398), prohibit the assurance of land to corporations except under Royal Licence or with statutory authority.

*Consultative Council.*—For the constitution and functions of these Councils, see s. 7, *post*.

*Vesting date.*—Such date on or after April 1, 1948, not being less than six months after the establishment of the British Electricity Authority nor less than three months after the establishment of all the Area Boards and the definition by order of their areas, as the Minister of Fuel and Power may by order appoint. April 1, 1948, has been so appointed (ss. 14 (1) and 67 (1), *post*, and see the notes thereto).

*Regulations under sub-s. (7).*—On August 14, 1947, the Minister of Fuel and Power made the Electricity (Central Authority and Area Boards) Regulations, 1947, S. R. & O., 1947, No. 1750, *post*. Such regulations include provisions as to disclosure of interest and disposal of such interest when required. For the general provisions as to regulations, see s. 64, *post*. Regulations under the present subsection are to be laid before Parliament under s. 64 (3), *post*; but see note thereto.

*Definitions.*—As to "Area Board," see s. 1 (3), *ante*. For definitions of "North of Scotland Board," "regulations" and "officer," see s. 67 (1), *post*.

**4. Definition of and variation of areas.**—(1) The Minister shall before the vesting date by order made after consultation with the Central Authority define the areas for which Area Boards are established under this Act, and each area shall be so defined by reference to a map, and copies of the map of each area shall be available for inspection at such places and at such times as may be specified in a notice published by the Minister in the London Gazette and, in the case of an area in Scotland, the Edinburgh Gazette, and (in all cases) in such newspapers circulating in the area as the Minister thinks fit. [312]

(2) The Minister may, after consultation with the Central Authority and after giving to each Area Board concerned an opportunity to make representations, by order vary the areas for which Area Boards are established under this Act, and such variation may involve not only the variation of the boundaries of existing areas but also the formation of a new area from any part of an existing area or parts of existing areas or the amalgamation of an existing area with any other such area or part thereof.

Any such order shall define by reference to a map the new areas or new boundaries constituted by the order, and copies of any such map shall be available for inspection in like manner as copies of the maps defining the original areas. [313]

(3) If any question arises as to the exact boundary of any area, as defined by any order made under this section, it shall be determined by the Minister, after giving to the Area Boards concerned an opportunity to make representations on such question. [314]

(4) An order made under subsection (2) of this section the effect of which is to increase or reduce the total number of such areas as aforesaid, or to constitute a new area for which a new Area Board is required to be established under the next following subsection, shall not be made unless a draft thereof has been laid before Parliament and has been approved by resolution of each House of Parliament. [315]



(5) An order made under subsection (2) of this section shall state whether the areas affected by the order are to be regarded as the areas of existing Area Boards, or whether any such area is to be regarded as a new area for which a new Area Board is required to be established, and in the latter case a new Board shall be established in accordance with the foregoing provisions of this Act and those provisions shall apply to that Board accordingly, and it shall be known by such name as may be specified in the order. [316]

(6) An order made under subsection (2) of this section shall, so far as it appears to the Minister to be necessary or expedient in consequence of the variation of areas or the establishment of a new Area Board, provide—

- (a) for the transfer of property, rights, liabilities and obligations from one Area Board to another ;
- (b) for the modification of agreements for the purpose of giving effect to the transfer of rights, liabilities and obligations thereunder from one Area Board to another and, in a case where part only of the rights, liabilities and obligations under any agreement are transferred, for substituting for that agreement separate agreements in the requisite terms, and for any apportionments and indemnities consequent thereon ;
- (c) for the purpose of transferring part of the land comprised in any lease vested in any such Board to another such Board, for the severance of that lease, and for apportionments and indemnities consequent thereon ;
- (d) for dissolving any Area Board the whole of whose functions are to be exercised by another Area Board or Boards, and for winding up the affairs of the Board to be dissolved ; and
- (e) for such other financial adjustments between the Boards concerned as may be required in consequence of any such transfer, and for any other matter supplementary to or consequential on the matters aforesaid, including the continuation of legal proceedings. [317]

(7) The foregoing provisions of this section except subsection (1) shall apply to the North of Scotland Board and the North of Scotland District as if that Board were an Area Board and that District were the area of an Area Board, subject to the modification that an order or determination affecting that Board and District shall be made by the Minister and the Secretary of State jointly. [318]

*Effect of section.*—After consulting the Central Authority the Minister is to make an order or orders defining the exact limits of each area by reference to a map, copies of which must be available for inspection ; and such areas may later be varied and, if thought fit, new areas may be created in like manner. Boundary disputes are to be determined by the Minister. In the creation of new areas and in certain other cases, special formalities must be observed (see *infra*) and power is given to make the necessary transfers and other arrangements.

Note that the White Paper (Cmd. 7007) entitled “ Electricity Supply Areas,” which was presented with the Bill and sets out the principles on which the areas are delimited, includes a plan amplifying the broad indication of the proposed areas given in Sched. I, *post*.

Under sub-s. (1), *ante*, the Minister, on November 18, 1947, made the Electricity (Areas of Area Boards) Order, 1947, S. R. & O., 1947, No. 2465, defining the areas by reference to maps prepared on his authority and certified under his hand.

*Vesting date.*—Such date on or after April 1, 1948, not being less than six months after the establishment of the British Electricity Authority nor less than three months after the establishment of all the Area Boards and the definition by order of their areas, as the Minister of Fuel and Power may by order appoint. April 1, 1948, has been so appointed (ss. 14 (1) and 67 (1), *post*, and see the notes thereto).

*Orders of the Minister of Fuel and Power.*—For the general provisions as to orders, see s. 64, *post*. If the effect of an order under sub-s. (2) of the present section will be to increase or reduce the total number of areas or to constitute a new area for which a new Area Board is required, the affirmative resolution procedure applies, that is to say, a draft must first be laid before Parliament and approved by resolution of both Houses. In all other cases under the present section orders are to be laid before Parliament by virtue of s. 64 (3), *post* ; but see note thereto.

*Public inquiries.*—In connection with this section, note the Minister's power under s. 66 (1), *post*, in any case where he deems it advisable to hold public inquiries.

*Defined by reference to a map.*—By s. 64 (6), *post*, in the case of orders defining or varying the areas for which Area Boards are established under the Act, copies of the relevant maps are

to be available, during the period for which the orders or drafts thereof are laid before Parliament, for inspection by members of both Houses.

*Definitions.*—As to "Area Board," see s. 1 (3), *ante*. For definitions of "lease," "functions" and "North of Scotland Board," see s. 67 (1), *post*.

**5. Powers of Minister in relation to Central Authority.**—(1) The Minister may, after consultation with the Central Authority, give to that Authority such directions of a general character as to the exercise and performance by the Authority of their functions under this Act as appear to the Minister to be requisite in the national interest, and the Authority shall give effect to any such directions. [319]

(2) In carrying out such measures of reorganisation or such works of development as involve substantial outlay on capital account, and in giving directions to any Area Board with respect to such measures or works, the Central Authority shall act in accordance with a general programme settled from time to time in consultation with the Minister. [320]

(3) In the exercise and performance of their functions as to training, education and research, the Central Authority shall act in accordance with a general programme settled as aforesaid. [321]

(4) The Minister may, after consultation with the Central Authority, give to that Authority directions as to the use or disposal of any assets vested in the Authority by or under this Act which are not connected with the generation, transmission or distribution of electricity, and the Authority shall give effect to any such directions. [322]

(5) The Central Authority shall afford to the Minister facilities for obtaining information with respect to the property and activities of the Authority, and furnish him with returns, accounts and other information with respect thereto, and afford to him facilities for the verification of information furnished, in such manner and at such times as he may require. [323]

(6) The Central Authority shall furnish the Minister with returns, accounts and other information with respect to the property and activities of all Area Boards, in such manner and at such times as he may reasonably require. [324]

(7) The foregoing provisions of this section, except subsection (5) and the provisions relating to Area Boards, shall apply to the North of Scotland Board in like manner as they apply to the Central Authority, subject to the modification that references to the Secretary of State shall be substituted for references to the Minister. [325]

*General note.*—This section describes the method by which the corporation responsible for the supply of electricity, though given a large measure of independence, is subjected in the national interest to public control through the Minister.

*The Minister.*—The Minister of Fuel and Power (s. 67 (1), *post*).

*Central Authority.*—The British Electricity Authority (s. 1 (3), *ante*). For the constitution of this body, see s. 3, *ante*.

*Area Board.*—As to the meaning of this term, see s. 1 (3), *ante*.

*Directions of a general character.*—*E.g.*, in regard to strategical questions involved in the siting of new power stations; in regard to the relation of the electricity industry to the Government's policy of creating employment in development areas; as to the general fields of research to be covered; and generally as required in the national interest.

*Sub-s. (1).*—The directions referred to here should be distinguished from the general directions contemplated in sub-s. (1). They are specific directions in regard to particular assets, *e.g.*, where the use or disposal of "non-electricity" assets is not sufficiently wide in its implications to warrant the giving of general directions.

**6. Powers of Central Authority and Minister in relation to Area Boards.**—

(1) The Central Authority may give such directions to Area Boards as appear to the Central Authority to be necessary or expedient for the purpose of co-ordinating the distribution of electricity by Area Boards and exercising a general control over the policy of those Boards, and every Area Board shall give effect to any such directions given to them by the Central Authority. [326]

(2) In the exercise and performance of their functions as to training, education and research, every Area Board shall act in accordance with a

general programme settled from time to time in consultation with the Minister. [327]

(3) The Minister may after consultation with the Central Authority give directions to any Area Board as to the use or disposal of any assets vested in the Board by or under this Act which are not connected with the distribution of electricity, and the Board shall give effect to any such directions. [328]

(4) Every Area Board shall afford to the Central Authority and, if the Minister so requires, to the Minister, facilities for obtaining information with respect to the property and activities of the Area Board, and furnish the Central Authority and, if he so requires, the Minister, with returns, accounts, and other information with respect thereto, and afford to the Central Authority and the Minister facilities for the verification of information furnished, in such manner and at such times as the Central Authority or the Minister may require. [329]

*General note.*—This section provides for the control of Area Boards by two distinct authorities—the Central Authority and the Minister. Sub-s. (1) relates to directions by the Central Authority and sub-s. (3) to directions on specific matters by the Minister. Further control by the Minister is provided by sub-s. (2), while sub-s. (4) relates to the giving of information to both Central Authority and Minister.

*Central Authority.*—The British Electricity Authority (s. 1 (3), *ante*). For the constitution of this body, see s. 3, *ante*.

*The Minister.*—The Minister of Fuel and Power (s. 67 (1), *post*).

*Sub-s. (3).*—This provision corresponds to s. 5 (4), *ante*. Note that s. 5 (4) is wider in scope than the present provision, the former referring to generation and transmission in addition to distribution. This arises from the general principle of the Act that the Central Authority shall be responsible for generation and Area Boards for the ultimate distribution.

*Definition.*—As to "Area Boards," see s. 1 (3), *ante*.

**7. Consultative Councils.**—(1) A Consultative Council shall be established for the purposes mentioned in this section for the area of every Area Board. [330]

(2) Each of the said Councils shall consist of not less than twenty nor more than thirty persons to be appointed by the Minister of whom—

- (a) not less than half nor more than three-fifths shall be appointed from a panel of persons nominated from amongst members of local authorities in the area by such associations as appear to the Minister to represent those authorities; and
- (b) the remainder shall be appointed, after consultation with such bodies as the Minister thinks fit, to represent agriculture, commerce, industry, labour and the general interests of consumers of electricity and other persons or organisations interested in the development of electricity in the area.

In making the appointments mentioned in paragraph (b) of this subsection, the Minister shall have particular regard to any nominations made to him by the bodies aforesaid of persons who are recommended by them as having both adequate knowledge of the requirements of the interests to be represented and also the ability to exercise a wide and impartial judgment on the matters to be dealt with by the Council generally. [331]

(3) A person shall be disqualified for being appointed or being the chairman of a Consultative Council so long as he is a member of the Commons House of Parliament, but a member of a Consultative Council other than the chairman shall not by reason of his appointment as such a member be disqualified for being elected to, or for sitting or voting as a member of, the Commons House of Parliament. [332]

(4) Each of the said Councils shall be charged with the duties—

- (a) of considering any matter affecting the distribution of electricity in the area, including the variation of tariffs and the provision of new or improved services and facilities within the area, being a matter which is the subject of a representation made to them by

consumers or other persons requiring supplies of electricity in that area, or which appears to them to be a matter to which consideration ought to be given apart from any such representation, and where action appears to them to be requisite as to any such matter, of notifying their conclusions to the Area Board ; and

(b) of considering and reporting to the Area Board on any such matter which may be referred to them by that Board. [333]

(5) Each of the said Councils shall be informed by the Area Board of that Board's general plans and arrangements for exercising and performing their functions under this Act and may make representations thereon to that Board. [334]

(6) The Area Board shall consider any conclusion, reports and representations notified or made to them by the Council for their area under the two last foregoing subsections and the Council may, after consultation with the Area Board, make representations to the Central Authority on matters arising thereout. [335]

(7) Where representations have been so made to the Central Authority and it appears to that Authority, after consultation with the Area Board and with the Council, that a defect is disclosed in that Area Board's general plans and arrangements for the exercise and performance of their functions under this Act, the Central Authority may give to the Area Board such directions as they think fit for remedying the defect and the Area Board shall give effect to any such directions. [336]

(8) A Consultative Council may, after consultation with the Central Authority, make representations to the Minister on any matters arising out of representations made by them to the Central Authority under subsection (6) of this section, and if it appears to the Minister, after consultation with the Area Board and with the Council, that a defect is disclosed in the Area Board's general plans and arrangements for the exercise and performance of their functions under this Act, he may notify the defect to the Central Authority, and thereupon the Central Authority shall give to the Area Board such directions as they think necessary for remedying the defect, and the Area Board shall give effect to any such directions. [337]

(9) Every Consultative Council shall prepare and submit to the Minister a scheme for the appointment by them of committees or individuals to be local representatives of the Council in such localities as may be specified in the scheme, and it shall be the duty of such committees and individuals to consider the particular circumstances and requirements of those localities with respect to the distribution of electricity and to make representations to the Council thereon, and to be available for receiving on behalf of the Council representations from consumers in those localities ; and, if the scheme is approved by the Minister, the Consultative Council shall put it into effect.

A member of a Consultative Council shall be eligible for appointment under such a scheme, either as a member of a committee or as an individual, but membership of the Council shall not be a necessary qualification for such an appointment. [338]

(10) A Consultative Council may, subject to the approval of the Minister as to numbers, appoint such officers as appear to the Council to be requisite for the proper exercise and performance of their functions (including functions of any committee or individual appointed under the last foregoing subsection), and there shall be paid by the Central Authority—

(a) to the members of the said Councils or of any such committee or to any such individuals such allowances in respect of any loss of remunerative time and such travelling allowances and allowances in respect of their out-of-pocket expenses ; and

(b) to the officers of the said Councils such remuneration (whether by way of salary or fees) and such allowances,

as the Minister may with the approval of the Treasury determine. [339]

(11) A Consultative Council shall be furnished by the Area Board concerned with such office accommodation as appears to the Board to be requisite for the proper exercise and performance of their functions (including the functions of any such committee or individual as aforesaid) or as may be directed by the Minister. [340]

(12) Where, in consequence of the variation of the areas of Area Boards under the foregoing provisions of this Part of this Act, it is necessary to establish new Consultative Councils under this section, the Minister may by order provide for dissolving and winding up the affairs of any Consultative Council who cease to exercise or perform functions by reason of the variation. [341]

(13) Provision may be made by regulations in relation to Consultative Councils for any matters for which provision may be made by regulations under section three of this Act in relation to the Central Authority and any Area Board, and for the appointment of a chairman of each of the said Councils, with or without provision for another to act in his place, and, subject to the provisions of any such regulations, the said Councils shall have power to regulate their own procedure. [342]

(14) The foregoing provisions of this section other than subsection (8) shall apply to the North of Scotland Board as if that Board were an Area Board and the North of Scotland District were the area of an Area Board, subject to the modifications that—

(a) for references to the Minister there shall be substituted references to the Secretary of State; and

(b) for the references to the Central Authority there shall be substituted—

(i) in subsections (6) and (7) references to the Secretary of State, and

(ii) in subsection (10) references to the North of Scotland Board.

[343]

*General note.*—For the purpose and status of the Consultative Councils to be established under this section, see the Preliminary Note, *ante*.

*The Minister.*—The Minister of Fuel and Power (s. 67 (1), *post*).

*Central Authority.*—The British Electricity Authority (s. 1 (3), *ante*). For the constitution of this body, see s. 3, *ante*.

*Panel of persons nominated.*—The Minister is to consult the associations representing local authorities and obtain from them a panel of persons from whom he will make the final selection. The object of adopting this plan rather than ask the local authorities in the areas to nominate direct is to have a preliminary “screening” by which the number on the panel would be very much reduced and the Minister’s task of selection greatly eased.

*Associations representing local authorities.*—The Lord Chancellor stated at the Committee Stage of the Bill in the House of Lords on July 22, 1947: “It is our intention that the following associations of authorities should be approached as to a panel of nominees: the County Councils Association, the London County Council, the Association of Municipal Corporations, the Metropolitan Boroughs Standing Joint Committee, the Urban District Councils Association and the Rural District Councils Association” (151 H. of L. Official Report 108).

*Duties of Consultative Councils.*—The duties of Consultative Councils, as set out in sub-s. (4), *ante*, are wide, including as they do any local matters affecting the distribution of electricity, variations of tariffs and the provision of new or improved services and facilities within the area. These are matters with which the Industrial and Domestic Coal Consumers’ Councils established under the Coal Industry Nationalisation Act, 1946, s. 4 (39 Halsbury’s Statutes 258) are not competent to deal.

*Sub-s. (9).*—In connection with the appointment of committees or individuals to be local representatives of the Consultative Councils, note the Minister’s intention, referred to in the Preliminary Note, *ante*, that district offices of the Area Boards shall be set up. Presumably the localities covered by the committees and the districts served by these offices will normally correspond.

*Orders and regulations.*—For the general provisions as to orders and regulations, see s. 64, *post*. Orders and Regulations under sub-ss. (12) and (13) respectively of the present section are to be laid before Parliament under s. 64 (3), *post*; but see note thereto. As to offences against regulations, see s. 61 (2), *post*.

*Definitions.*—As to “Area Board,” see s. 1 (3), *ante*. For definitions of “functions,” “officers” and “North of Scotland Board,” see s. 67 (1), *post*.

**8. Annual reports of Central Authority and Area Boards.**—(1) The Central Authority shall, as soon as possible after the end of each financial year, make to the Minister a report on the exercise and performance by them of their functions during that year and on their policy and programmes, and every Area Board shall, as soon as possible after the end of each financial year, make to the Central Authority a report on the exercise and performance by them of their functions during that year and on their policy and programmes.

[344]

(2) The report of the Central Authority for any year shall set out any direction given by the Minister to the Authority during that year unless the Minister has notified the Authority his opinion that it is against the interests of national security to do so, and the Central Authority shall submit with their report for any year copies of the reports for that year of the Area Boards.

[345]

(3) The Minister may give directions as to the form of the reports to be made under this section, and the Central Authority and Area Boards shall comply with any such directions. [346]

(4) A Consultative Council may, as respects any financial year of the Area Board for their area or, if their area is the North of Scotland District, of the North of Scotland Board, make to the Board a report on the exercise and performance by the Council of their functions during that year, and any such report shall be made to the Board as soon as possible after the end of the said financial year, and the Board shall include that report in the report made by them under this section or, as the case may be, under section twenty-three of the Act of 1943. [347]

(5) The Minister shall lay before each House of Parliament a copy of the report made for each financial year by the Central Authority together with copies of the reports of the Area Boards, and shall at the same time lay before each House of Parliament a report with respect to the exercise of his functions during that year under this Act and the Electricity (Supply) Acts, 1882 to 1936, except as regards matters which in his opinion it is against the interests of national security to disclose. [348]

*Effect of section.*—The Central Authority is to present an annual report to the Minister and the Area Boards are to present to the Central Authority similar reports, copies of which are to be presented to the Minister with the reports of the Central Authority. Together such reports are to be laid before Parliament. In contradistinction to these provisions, which are obligatory, Consultative Councils are empowered to present reports to the Area Boards if they wish to do so.

*Central Authority.*—The British Electricity Authority (s. 1 (3), *ante*). For the constitution of this body, see s. 3, *ante*.

*The Minister.*—The Minister of Fuel and Power (s. 67 (1), *post*).

*Against the interests of national security.*—The corresponding phrase in the original Bill was "against the national interest," but this was felt to be too wide and accordingly the Act makes provision for secrecy only in the case of directions given by the Minister where security is concerned.

*Consultative Council.*—For the constitution and functions of these councils, see s. 7, *ante*.

*Electricity (Supply) Acts, 1882 to 1936.*—These are the Electric Lighting Act, 1882 (7 Halsbury's Statutes 686); the Electric Lighting Act, 1888 (7 Halsbury's Statutes 702); the Electric Lighting Act, 1909 (7 Halsbury's Statutes 744); the Electricity (Supply) Act, 1919 (7 Halsbury's Statutes 754); the Electricity (Supply) Act, 1922 (7 Halsbury's Statutes 778); the Electricity (Supply) Act, 1926 (7 Halsbury's Statutes 792); the Electricity (Supply) Act, 1928 (7 Halsbury's Statutes 826); the Electricity (Supply) Act, 1933 (26 Halsbury's Statutes 137); the Electricity (Supply) Act, 1935 (28 Halsbury's Statutes 51); the Electricity Supply (Meters) Act, 1936 (29 Halsbury's Statutes 133); and Acts applying to Scotland only.

*Definitions.*—As to "Area Board," see s. 1 (3), *ante*. For definitions of "financial year," "functions," "North of Scotland Board" and "Act of 1943," see s. 67 (1), *post*.

**9. Compulsory purchase of land.**—(1) The Minister may authorise any Electricity Board to purchase compulsorily any land which they require for any purpose connected with the discharge of their functions, and the Acquisition of Land (Authorisation Procedure) Act, 1946 (except section two thereof), shall apply, in relation to any such compulsory purchase, as if the Board were a local authority within the meaning of that Act and as if this Act had been in force immediately before the commencement of that Act. [349]



(2) In this section the expression "land" includes easements and other rights over land, and an Electricity Board may be authorised under this section to purchase compulsorily a right to place an electric line across land, whether above or below ground, and to repair and maintain the line, without purchasing any other interest in the land.

In relation to the compulsory purchase of any such right to place an electric line across land, the said Acquisition of Land (Authorisation Procedure) Act, 1946 (except section two thereof), and the enactments incorporated therewith shall have effect as if references (whatever the terms used) to the land comprised in the compulsory purchase order were construed, where the context so requires, as references to the land across which the line is to be placed, and references to the obtaining or taking possession of the first-mentioned land were construed as references to the exercise of the said right. [350]

(3) Section fourteen of the Schedule to the Electric Lighting (Clauses) Act, 1899 (as incorporated with this Act), so far as the said section relates to the Postmaster General, shall apply to the placing of an electric line in pursuance of any right purchased under this section in like manner as it applies to the execution of works involving the placing of lines in, under, along, or across any street or public bridge. [351]

(4) This section shall, in relation to the North of Scotland Board, only apply to the purchase of land or rights other than land or rights required by them for the purposes of a constructional scheme under the Act of 1943, and shall apply with the substitution of a reference to the Secretary of State for the reference to the Minister. [352]

*The Minister.*—The Minister of Fuel and Power (s. 67 (1), *post*).

*Any Electricity Board.*—The British Electricity Authority, any of the Area Boards, or the North of Scotland Board (s. 1 (3), *ante*).

*Acquisition of Land (Authorisation Procedure) Act, 1946.*—39 Halsbury's Statutes 52. This Act provides a uniform procedure for authorising the compulsory purchase of land by local authorities where power to authorise such a purchase is conferred by an existing public Act. Sub-s. (1) of the present section makes this procedure applicable to Electricity Boards authorised by the Minister of Fuel and Power to purchase land compulsorily. S. 2, the application of which is negatived by the present section in the case of Electricity Boards, provides temporary powers for the speedy acquisition of land in urgent cases.

*Acquisition of wayleaves.*—The Electricity (Supply) Act, 1919, s. 22 (7 Halsbury's Statutes 768), authorises joint electricity authorities and authorised undertakers to place lines below ground and above ground subject to specific limitations, particularly in the case of underground wayleaves where, in the absence of consent both by the owner and the occupier, ministerial approval is required. The conditions of the section were felt to be too restrictive and accordingly sub-s. (2) amends the law in this respect. Note that s. 22 of the Electricity (Supply) Act, 1919, *supra*, has been modified by Sched. IV, Part I, of the present Act, *post*, to bring its provisions into line with the new supply arrangements.

*Protection of gas and water undertakers.*—The Electric Lighting Act, 1909, s. 24 (7 Halsbury's Statutes 753), protected gas and water undertakers from the compulsory acquisition under that Act of any land belonging to them or used or authorised to be used by them. Though that section has been repealed by Sched. V of the present Act, *post*, it was felt that such undertakers were adequately protected by the provisions of the Acquisition of Land (Authorisation Procedure) Act, 1946, *supra*.

*Local authority within the meaning of that Act.*—See the Acquisition of Land (Authorisation Procedure) Act, 1946, s. 8 (39 Halsbury's Statutes 61).

*Commencement of that Act.*—April 18, 1946, the date of passing of the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Halsbury's Statutes 52).

*Enactments incorporated therewith.*—See the Acquisition of Land (Authorisation Procedure) Act, 1946, Sched. II (39 Halsbury's Statutes 66).

*Electric Lighting (Clauses) Act, 1899, Sched., s. 14.*—7 Halsbury's Statutes 713. This section relates to the notice of works, with plan, to be served on the Postmaster General. Note that this Act is not included in the Electricity (Supply) Acts, 1882 to 1936.

*Definitions.*—For definitions of "functions," "electric line," "North of Scotland Board" and "Act of 1943," see s. 67 (1), *post*.

**10. Power of Electricity Boards to promote and oppose Bills.**—The Central Authority and any Area Board may, with the consent of the Minister, and the North of Scotland Board may, with the consent of the Secretary of State, promote Bills in Parliament and any Electricity Board may oppose any Bill in Parliament, and this power shall be in lieu of any power to promote or oppose Bills which an Electricity Board might otherwise possess under any of the provisions of this Act as successors to any authorised undertakers. [353]



*Central Authority.*—The British Electricity Authority (s. 1 (3), *ante*). For the constitution of this body, see s. 3, *ante*.

*The Minister.*—The Minister of Fuel and Power (s. 67 (1), *post*).

*Consent of the Minister.*—By being able to oppose Bills without consent, but requiring consent for promoting Bills, Electricity Boards are by this section put in the position in which local authorities are put by ss. 253 and 254 (2) of the Local Government Act, 1933 (26 Halsbury's Statutes 443), re-enacting the Borough Funds Act, 1872. No doubt parliamentary Questions could be addressed to the Minister as to his reasons for refusal.

*In lieu of any power.*—Existing powers to promote and oppose Bills, which were piecemeal and limited to particular areas, are abrogated in favour of the single general power given by the section.

*Definitions.*—As to "Area Board," see s. 1 (3), *ante*. For definition of "North of Scotland Board," see s. 67 (1), *post*.

**11. Electricity Boards not to be exempt from taxation, etc.**—(1) Subject to the provisions of subsection (2) of this section, nothing in this Act shall be deemed to exempt any Electricity Board from any liability for any tax, duty, rate, levy or other charge whatsoever whether general or local. [354]

(2) For the purposes of section fifty-two of the Finance Act, 1946 (which exempts from stamp duty certain documents connected with nationalisation schemes) any transfers of property from one Electricity Board to another effected by an order made under this Act shall be deemed to be part of the initial putting into force of such a scheme. [355]

*Exemption from taxation.*—Compare with this section the analogous provisions of the Coal Industry Nationalisation Act, 1946, s. 47 (39 Halsbury's Statutes 293), in the case of the National Coal Board, and the Cotton (Centralised Buying) Act, 1947 (10 & 11 Geo. 6, c. 26), s. 5 (13), in the case of the Raw Cotton Commission.

*Any Electricity Board.*—The British Electricity Authority, any of the Area Boards, or the North of Scotland Board (s. 1 (3), *ante*).

*Finance Act, 1946, s. 52.*—39 Halsbury's Statutes 751.

**12. Liability of Electricity Boards in actions, etc.**—(1) The Public Authorities Protection Act, 1893, and section twenty-one of the Limitation Act, 1939, shall not apply to any action, prosecution or proceeding against any Electricity Board or in respect of any act, neglect or default done or committed by a servant or agent of any such Board in his capacity as a servant or agent of theirs. [356]

(2) In their application to any such action as aforesaid sections two and three of the Limitation Act, 1939 (which relate to limitation of actions of contract and tort and certain other actions), shall have effect with the substitution therein for references to six years of references to three years. [357]

*Public authorities' protection.*—S. 1 (a) of the Public Authorities Protection Act, 1893 (13 Halsbury's Statutes 456), as amended and replaced by the Limitation Act, 1939, s. 21 (32 Halsbury's Statutes 235), provides that no civil action shall be brought against any person for any act done in pursuance, or execution, or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any neglect or default in the execution of any such Act, duty or authority, unless it is commenced before the expiration of one year from the date on which the cause of action accrued, subject to a proviso as to continuing acts, neglects or defaults. In the case of criminal proceedings the original time-limit of six months remains.

The effect of sub-s. (1) of the present section is to withdraw this protection from Electricity Boards, their servants and agents, and to substitute a period of three years for the usual period of six years within which action must be brought. Subject to this modification, ss. 2 and 3 of the Limitation Act, 1939 (32 Halsbury's Statutes 225, 226) apply to the actions and proceedings referred to in sub-s. (1) of the present section.

The period of three years is an admitted compromise arising largely from particular historical causes. Local authorities in respect of their electricity undertakings were entitled to the full protection of the Public Authorities Protection Act, 1893, *supra*, but private companies were not so entitled and came under the ordinary six-year rule. Inasmuch as the new Boards are replacing both types of undertakers it was felt that an intermediate period provided the fairest solution. Three years is the period provided by the Coal Industry Nationalisation Act, 1946, s. 49 (39 Halsbury's Statutes 294), and by the Transport Act, 1947, s. 11 (2) (see title ROAD TRAFFIC, *post*). By the Bill for the first of these Acts, as introduced into the House of Commons, the corresponding bodies would have had a more favoured position, but a Government Amendment at an early stage established the precedent followed in the Transport Act and the present section.

*Limitation Act, 1939, ss. 2 and 3.*—32 Halsbury's Statutes 225, 226.

## PART II

## ACQUISITION OF ELECTRICITY UNDERTAKINGS

*Vesting of Assets*

**13. Bodies to whom Part II of Act applies.**—(1) This Part of this Act applies to—

- (a) the bodies specified in the Second Schedule to this Act (hereafter in this Act referred to as “authorised undertakers”) being the bodies who fall within the class described in the next following subsection;
- (b) every company (hereafter in this Act referred to as a “power station company”) who are not authorised undertakers but whose business wholly or mainly consists in the construction, owning or operating of a generating station or stations for the supply of electricity to authorised undertakers; and
- (c) every company (hereafter in this Act referred to as an “electricity holding company”) who—
  - (i) are not authorised undertakers, or a power station company,
  - (ii) had at the date of the last audited balance sheet of the electricity holding company before the first day of January, nineteen hundred and forty-six, one or more subsidiary companies, being authorised undertakers or power station companies, and
  - (iii) at the said date held securities of, or rights in respect of moneys owed by, the said subsidiary companies, the value of which, as shown in that balance sheet, amounted to not less than three-quarters of the total amount of all the assets of the holding company as so shown:

Provided that any company who are not authorised undertakers, a power station company or an electricity holding company but who hold securities of, or rights in respect of monies owed by, authorised undertakers or power station companies amounting to a substantial proportion of the assets of the first mentioned company, may serve on the Minister, not later than two months after the passing of this Act, a notice stating that they wish to be treated as an electricity holding company, and the Minister may, on the service of such notice, if he thinks fit, by order direct that this Act is to have effect, and be deemed always to have had effect, as if the company were an electricity holding company, and this Act shall have effect accordingly.

[358]

(2) The class of bodies referred to in paragraph (a) of the last foregoing subsection are—

- (i) bodies who supply electricity, under the authority of any enactment, in any area of supply in Great Britain; and
- (ii) bodies who supply electricity, under the authority of an enactment, to the bodies mentioned in paragraph (i) hereof or to the Central Electricity Board:

Provided that the said class does not include—

- (a) the North of Scotland Board;
- (b) any body, other than a local authority, whose business as suppliers of electricity consists wholly or mainly in the supply of electricity for consumption by themselves or by a company of whom they are a subsidiary company;
- (c) any local authority who supply electricity for the purposes of a transport undertaking carried on by them and do not supply electricity for other purposes to any substantial extent; or

- (d) any body, other than a local authority, who carry on a transport undertaking and who do not supply electricity under any provisional or special order made under the Electricity (Supply) Acts, 1882 to 1936. [359]

(3) Where a special order made under section twenty-six of the Electricity (Supply) Act, 1919, comes into force between the passing of this Act and the vesting date and provides for the transfer of the undertaking or any part of the undertaking of any authorised undertakers to another body, the order may—

- (a) if the body from whom the undertaking or part thereof is transferred no longer falls within the class described in subsection (2) of this section, provide that this Part of this Act shall not apply to that body ;
- (b) if by reason of the transfer, the body to whom the undertaking or part thereof is transferred falls within the said class, provide that this Part of this Act shall apply to that body ;

and this Act shall have effect in accordance with any such direction. [360]

(4) Any such special order may, for the purpose of giving effect to a transfer of the undertaking or part thereof, revoke or amend any enactment relating to the powers of the body from whom the undertaking or part thereof is transferred. [361]

(5) For the purposes of paragraph (c) of subsection (1) of this section, where the value of any such securities or rights as are therein mentioned is not separately shown in the balance sheet therein mentioned, by reason that they are grouped with other assets of the company and the balance sheet shows the value of the group as a whole, the value placed on the said securities or rights in the books of the company and used in arriving at the value of the group of assets as so shown shall have effect as if it had been shown separately in the balance sheet. [362]

(6) Where an agreement under section eighteen of the Act of 1943 for the transfer to the North of Scotland Board of the whole or any part of the undertaking of any undertakers comes into force between the passing of this Act and the vesting date, and the undertakers thereupon cease to fall within the class described in subsection (2) of this section, this Part of this Act shall not apply to them. [363]

*General note.*—This section lays down the necessary formula for determining the bodies to be affected by the transfer provisions of the Act. The phrase “body to whom this Part of this Act applies” appears so frequently in the next twenty-one sections that the present section may be regarded almost in the light of an interpretation section to the rest of Part II.

*Company.*—By s. 67 (1), *post*, “company” means a company incorporated by any enactment and a company within the meaning of the Companies Act, 1929, by s. 380 (1) of which (2 Halsbury’s Statutes 1006) the term means a company formed and registered under that Act or an existing company, as there defined.

On the other hand both “subsidiary company” and “holding company” are defined by reference to their meaning in the Companies Act, 1947 (10 & 11 Geo. 6, c. 47) ; see s. 18 thereof.

*Service of notices.*—For the general provisions applicable to notices under the Act, see s. 63, *post*.

*The Minister.*—The Minister of Fuel and Power (s. 67 (1), *post*).

*Order of the Minister.*—For the general provisions as to orders, see s. 64, *post*. Orders of the Minister of Fuel and Power under the proviso to sub-s. (1) of the present section are to be laid before Parliament under s. 64 (3), *post* ; but see note thereto.

*Electricity (Supply) Acts, 1882 to 1936.*—For these Acts, see note to s. 8, *ante*.

*Electricity (Supply) Act, 1919, s. 26.*—7 Halsbury’s Statutes 772. This section deals with the substitution of special for provisional orders.

*Electricity holding companies.*—By the Electricity (Cornwall Power Co. Ltd.) Order, 1947, S. R. & O., 1947, No. 2814, made by the Minister on December 13, 1947, the present Act is to have effect as if the Cornwall Power Company Limited were an electricity holding company. As to Christy Bros. & Co., Ltd., see S.I. 1948 No. 12.

*Definitions.*—For definitions of “generating station,” “securities,” “enactment,” “North of Scotland Board,” “local authority” and “Act of 1943,” see s. 67 (1), *post*.

**14. Vesting of assets of electricity undertakings.**—(1) Subject to the provisions of this Part of this Act all property, rights, liabilities and obligations

which, immediately before such date as may be appointed by order of the Minister (in this Act referred to as "the vesting date") were property, rights, liabilities and obligations of a body to whom this Part of this Act applies, shall on the vesting date vest by virtue of this Act and without further assurance in such Electricity Board or Boards as may be specified in the following provisions of this section or determined thereunder.

The vesting date shall be not less than six months after the establishment of the Central Authority and not less than three months after the establishment of all the Area Boards and the definition by order made under Part I of this Act of all the areas for which those Boards are established and shall not be earlier than the first day of April, nineteen hundred and forty-eight. [364]

(2) Subject to the provisions of this section relating to the North of Scotland District—

- (a) the property, rights, liabilities and obligations mentioned in subsection (1) of this section of the Central Electricity Board, any power station company and any electricity holding company, shall vest in accordance with the said subsection (1) in the Central Authority ;
- (b) the property, rights, liabilities and obligations aforesaid of any authorised undertakers to whom this Part of this Act applies (other than the Central Electricity Board) shall vest as aforesaid in such one of the Area Boards as may be determined by order of the Minister :

Provided that—

(i) all generating stations of any such authorised undertakers and all main transmission lines of such undertakers, being lines connecting a generating station directly with another generating station or with any main transmission lines of the Central Electricity Board, and all property and rights held or used by the undertakers wholly or mainly for the purposes of such stations and transmission lines and all liabilities and obligations wholly or mainly incurred by the undertakers for those purposes ;

(ii) all rights, liabilities and obligations under agreements between any authorised undertakers and any railway undertakers for the supply of electricity to the railway undertakers for the purposes of haulage or traction, and all transmission lines used wholly or mainly for the purpose of giving a supply to any railway undertakers for the purposes of haulage or traction ; and

(iii) all investments and cash of any such undertakers and all rights and liabilities thereof in respect of income tax and excess profits tax ;

shall vest in the Central Authority and not in an Area Board. [365]

(3) The last foregoing subsection shall not apply—

- (a) to any authorised undertakers or power station company whose undertaking is wholly or mainly carried on in the North of Scotland District ; or
- (b) to any electricity holding company whose interests in undertakings of authorised undertakers and power station companies consist wholly or mainly of interests in the undertakings of undertakers and companies referred to in paragraph (a) of this subsection ;

and the property, rights, liabilities and obligations referred to in subsection (1) of this section of any such undertakers or company shall vest in accordance with that subsection in the North of Scotland Board instead of the Central Authority or an Area Board, as the case may be. [366]

(4) Any dispute arising under either of the last two foregoing subsections as to the Electricity Board in whom any property, rights, liabilities or obliga-

tions are to vest shall be determined by the Minister or, if the North of Scotland Board is a party to the dispute, by the Minister and Secretary of State jointly. [367]

(5) Subject to the provisions of this Part of this Act, every agreement to which any body to whom this Part of this Act applies were a party immediately before the vesting date, whether in writing or not, and whether or not of such a nature that rights, liabilities and obligations thereunder could be assigned by the body, shall, unless its terms or subject matter make it impossible that it should have effect as modified in manner provided by this subsection, have effect as from the vesting date as if—

- (a) the appropriate Board had been a party to the agreement ;
- (b) for any reference (however worded and whether express or implied) to the body there were substituted, as respects anything falling to be done on or after the vesting date, a reference to the appropriate Board ;
- (c) for any reference (however worded, and whether express or implied) to, or to any part of, or to any sum determined by reference to, any profits or receipts of the undertaking of the body or any part of that undertaking there were substituted, as respects profits or receipts arising on or after the vesting date, a reference to, or to the corresponding part of, or to a sum similarly determined by reference to, an estimate of what those profits or receipts would have been but for the vesting of the undertaking or part thereof in the appropriate Board ;
- (d) for any reference (however worded and whether express or implied) to the directors or any director of the body there were substituted, as respects anything falling to be done on or after the vesting date, a reference to such person as the appropriate Board may direct ;
- (e) for any reference (however worded and whether express or implied) to any officer of the body there were substituted, as respects anything falling to be done on or after the vesting date, a reference to such person as the appropriate Board may appoint or, in default of appointment, to the officer of the Board who corresponds as nearly as may be to the first mentioned officer ;
- (f) in the case of an agreement for the rendering of personal services to the body, the services to which the agreement relates were, on and after the vesting date, any services under the appropriate Board to be selected by that Board, which are reasonably equivalent services ; and
- (g) save as provided by the four last foregoing paragraphs, for any reference (however worded and whether express or implied) to the undertaking of the body or any part of that undertaking or to the area of supply of the body or any part of that area there were substituted, as respects anything falling to be done on or after the vesting date, a reference to so much of the business carried on by the appropriate Board as corresponds to the undertaking or part of the undertaking of the body or, as the case may be, a reference to the area constituting the said area of supply or part thereof immediately before the vesting date. [368]

(6) Other documents, not being enactments, which refer, whether specifically or generally, to any such body, shall be construed in accordance with the provisions of the last foregoing subsection, so far as applicable. [369]

(7) Without prejudice to the generality of the foregoing provisions of this section, where, by the operation of any of the said provisions, any right, liability or obligation vests in an Electricity Board, the Board and all other persons shall, as from the vesting date, have the same rights, powers and

remedies (and in particular the same rights as to the taking or resisting of legal proceedings or the making or resisting of applications to any authority) for ascertaining, perfecting or enforcing that right, liability or obligation as they would have had if it had at all times been a right, liability or obligation of the Board, and any legal proceedings or applications to any authority pending on the vesting date by or against the body, in so far as they relate to any property, right, liability or obligation vested in an Electricity Board by virtue of this Act, or to any agreement or document which has effect in accordance with subsection (5) or subsection (6) of this section, or to any enactment applied to the Board by or under this Act, shall be continued by or against the Board to the exclusion of the body. [370]

(8) Notwithstanding anything in this section—

- (a) there shall not, by reason of the vesting of property, rights, liabilities or obligations of any body to whom this Part of this Act applies, in any Electricity Board, be transferred to the Board any right, liability or obligation of the body in respect of any securities issued by the body ;
- (b) where any agreement provides for the borrowing of money by any such body or the raising of money by the issue of securities of any such body and the money has not been borrowed or raised before the vesting date, no right, liability or obligation under the agreement shall be transferred to any such Board ;
- (c) no right, liability or obligation under any agreement for the rendering by any person of services to any such body as a director (other than a managing director or a director whose functions are substantially those of an employee) shall be transferred to any such Board, except any liability in respect of fees earned or expenses incurred before the vesting date ; and
- (d) no right, liability or obligation of any such body, being a right exercisable against, or a liability or an obligation to, any other such body shall be transferred to any such Board :

Provided that where, under an agreement subsisting immediately before the vesting date, a body to whom this Part of this Act applies were under an obligation to give a bulk supply of electricity to another such body, and the obligation to give that supply and the right to receive it would, but for this subsection have vested in different Area Boards, the Area Board in whom that obligation would have vested shall continue to give the bulk supply to the other Area Board on such terms and conditions as may be agreed between them or, in default of agreement, as may be determined by the Central Authority. [371]

(9) Regulations may provide for the registration of the title of any Electricity Board to assets vesting in them by virtue of this Act, being assets of a kind subject to provision for the registration of title thereto, and for any other matters for which provision appears to the Minister to be necessary or expedient for the purpose of securing the effective transfer of any assets vesting in any such Board by virtue of this Act. [372]

(10) In this section the expression “ the appropriate Board ” means, in relation to any body all of whose property, rights, liabilities and obligations vest by virtue of this Act in a single Electricity Board, that Board, and in any other case means—

- (a) in relation to an agreement, the Electricity Board in whom rights, liabilities and obligations under the agreement vest by virtue of this Act ; and
- (b) in relation to any document other than an agreement, the Electricity Board appearing from the subject matter of that document to be concerned therewith. [373]



(11) Subject to the next following section and section seventeen of this Act, every body to whom this Part of this Act applies shall be dissolved on the vesting date. [374]

*General note.*—The preceding section having determined the “bodies to whom this Part of this Act applies,” provision is now made for the transfer of the assets and liabilities of such bodies to the appropriate Authority under the Act. Any question as to which Authority this is will normally fall to be determined by the Minister. The transfer is to take effect as from the vesting date, April 1, 1948 (see *infra*), from which date all transferring bodies are formally dissolved, subject to ss. 15, *infra*, and 17, *post*.

*Vesting date.*—By the Electricity (Vesting Date) Order, 1948, S.I. 1948 No. 217, dated February 6, 1948, the Minister, pursuant to his powers under the present section, appointed April 1, 1948, to be the vesting date for the purposes of the Act.

*Establishment of the Central Authority and of the Area Boards.*—*Prima facie*, it would seem that, by virtue of the opening words of s. 1 (1), *ante*, the date of establishment of the British Electricity Authority was the date of passing of the Act, and a similar position would appear to obtain in the case of the Area Boards by virtue of the opening words of s. 1 (2), *ante*. Nevertheless, the term “establishment” as it appears in the present context connotes an appointment of personnel to the relevant Authority; this interpretation is borne out by the phrasing of the provisos to s. 3 (2) and (3), *ante*. See also 151 H. of L. Official Report 44–45.

*The Minister.*—The Minister of Fuel and Power (s. 67 (1), *post*).

*Orders and regulations.*—For the general provisions applicable thereto, see s. 64, *post*. Orders and regulation under this section are to be laid before Parliament under s. 64 (3), *post*; but see note thereto. As to offences against regulations, see s. 61 (2), *post*.

*Sub-s. (4).*—In connection with this subsection, note the Minister's power under s. 66 (1), *post*, to hold a public inquiry in any case where he deems it advisable.

*Reasonably equivalent services.*—In Standing Committee of the House of Commons the Solicitor-General explained that if the appropriate Boards offered reasonably equivalent employment, but the employee disagreed, and if negotiations between them failed to result in compromise, the employee would be in a position to take the matter to the courts by writ in damages for breach of contract. The effect of the vesting was that a new contract came into being between the employee and the Board and in the possibility of recourse to the courts the employee enjoyed the same rights as other citizens (see H. of C. Official Report, S.C.E., March 27, 1947, cols. 440–441).

*Other documents, not being enactments.*—Sub-s. (5) of the present section refers to the transfer of agreements to which transferring authorities are parties immediately before the vesting date; sub-s. (6) refers to documents other than (a) such agreements, and (b) enactments. Examples of such documents are notices served under the Electric Lighting (Clauses) Act, 1899, Sched., s. 14 (7 Halsbury's Statutes 713), describing work proposed by authorised undertakers, and notes issued by companies demanding payment for electricity supplied (see H. of C. Official Report, S.C.E., March 27, 1947, col. 450).

*Sub-s. (8) (c).*—The object of this paragraph is to provide that the services of part-time directors, for whom no reasonably equivalent position under the Boards would be available, should not be transferred to the new Authorities; the same objection did not apply to “working directors” who are excepted from the paragraph and whose contracts accordingly vest in the new Authorities (H. of C. Official Report, S.C.E., March 27, 1947, cols. 458–459).

*Registration of title.*—*E.g.*, under the Land Registration Acts, 1925 and 1936 (15 Halsbury's Statutes 434; 29 Halsbury's Statutes 725). Registration of title is compulsory in the Administrative Counties of London and Middlesex, the County Borough of Croydon, and Eastbourne and Hastings. An order was in preparation to make the County of Surrey a compulsory area as from January 1, 1940, but the plan was held over on account of the war.

*Definitions.*—As to “Area Boards,” see s. 1 (3), *ante*. As to “power station company” and “electricity holding company,” see s. 13 (1), *ante*. As to “authorised undertakers,” see s. 67 (1) and Sched. II, *post*. For definitions of “generating station,” “main transmission lines,” “railway undertakers,” “North of Scotland Board,” “officer,” “enactments,” “securities” and “bulk supply,” see s. 67 (1), *post*.

**15. Provisions as to undertakings of local authorities.**—(1) In the case of any authorised undertakers being a local authority the provisions of the last foregoing section shall only apply to property held or used by the local authority wholly or mainly in their capacity as authorised undertakers, and rights, liabilities and obligations acquired or incurred by the local authority in the said capacity, and accordingly references in that section to the property, rights, liabilities and obligations of a body to whom this Part of this Act applies, or to any agreement to which any such body was a party, or to documents referring to any such body, or to legal proceedings or applications by or against any such body shall be construed as references to property held or used by the local authority wholly or mainly in their capacity as authorised undertakers and rights, liabilities and obligations acquired or incurred by the local authority in the said capacity or, as the case may be, to agreements, documents, legal proceedings or applications of or relating to the local authority in their capacity as authorised undertakers, and subsection (11) of the last foregoing section shall not apply to any such local authority. [375]



## (2) Regulations may provide—

- (a) for excluding from or including in the property, rights, liabilities and obligations which vest in an Electricity Board by virtue of this Act, such property, rights, liabilities or obligations held, used, acquired or incurred by any such local authority partly in their capacity as authorised undertakers and partly in other capacities, on such terms (which may include the payment of money), as may be agreed between the Electricity Board concerned and the local authority or, in default of agreement, determined in accordance with the regulations ;
- (b) for requiring any Electricity Board, as respects property which vests in them by virtue of this Act, being property held or used by any such local authority partly in their capacity aforesaid and partly in other capacities, to grant to the local authority such interests in the property or rights over or attaching to the property or in respect of the user thereof, on such terms (which may include the payment of money), as may be agreed between the Electricity Board and the local authority or, in default of agreement, determined in accordance with the regulations, or for requiring the similar grant of interests or rights by the local authority to the Electricity Board in a case where such property does not vest in the Board ;
- (c) for conferring on any Electricity Board in whom land of any such local authority is vested easements and other rights over or attaching to other land of the local authority, being easements and rights which are required to enable land which is so vested to be used for the purposes of the Board, on such terms (including the payment of money) as may be agreed between the Electricity Board and the local authority or, in default of agreement, determined in accordance with the regulations ;
- (d) for the severance of leases comprising land of which part only was used by the local authority in their capacity as authorised undertakers, and for apportionments and indemnities consequent on such severance ;
- (e) for substituting for any agreement entered into by any such local authority partly in their capacity as authorised undertakers and partly in other capacities separate agreements in the requisite terms, and for any apportionments and indemnities consequent thereon ; and
- (f) for any other matters supplementary to or consequential on the matters aforesaid for which provision appears to the Minister to be necessary or expedient.

For the purposes of this subsection, any property which is held or used by a local authority temporarily in their capacity as authorised undertakers and normally in other capacities, or normally in the said capacity and temporarily in other capacities, shall be deemed to be property held or used by a local authority partly in the said capacity and partly in other capacities.

[376]

(3) Any question arising under this section as to whether any property is or was held or used by any such local authority wholly or mainly in their capacity as authorised undertakers, or whether any property is or was (for the purposes of the last foregoing subsection) held or used partly in the said capacity and partly in other capacities, or whether any rights, liabilities or obligations were acquired or incurred by any such local authority in the said capacity or whether any agreements or documents relate or related to any such local authority in their capacity as authorised undertakers, shall in

default of agreement, be determined by the Minister of Health, and he shall have regard to whether or not entries relating to any property, rights or liabilities were or ought to have been included in accounts furnished by the local authority to the Electricity Commissioners under section nine of the Electric Lighting Act, 1882. [377]

(4) Where at any time before the expiration of three months beginning with the vesting date a local authority has served on the Minister of Health and on the Electricity Board concerned, or an Electricity Board has served on the said Minister and on the local authority concerned, a notice in the prescribed form stating that a question has arisen under this section or under any regulations made thereunder as to—

- (a) whether any property is or was held or used by the local authority wholly or mainly in their capacity as authorised undertakers and accordingly vests in the Electricity Board by virtue of this Act ;
- (b) whether any property of the local authority ought to be excluded from or included in the property which so vests ;
- (c) whether interests in any property of the local authority, or rights over or attaching to such property or in respect of the user thereof, ought to be granted by the local authority to the Electricity Board or by the Board to the authority ; or
- (d) whether any lease ought to be severed ;

and the question has not been settled by agreement or determined before the vesting date, the property concerned shall not, pending such agreement or determination, vest in the Electricity Board by virtue of this Act and, if the notice is given after the vesting date, shall be deemed not to have so vested, but the property shall, so far as it is so to vest having regard to the agreement or determination, vest on such date as may be agreed or determined, and pending the settlement or determination of the said question and the vesting of property and the granting of interest or rights in accordance therewith, the Electricity Board shall be entitled and shall be deemed to have been entitled as from the vesting date to use the property for the like purposes and to the like extent as it was used, immediately before that date, by the local authority in their capacity as authorised undertakers, on such terms (which may include the payment of money) as may be agreed between the Electricity Board and the local authority or, in default of agreement, determined by the Minister of Health. [378]

(5) Notwithstanding anything in the last foregoing section or this section, there shall not, by reason of the vesting of property, rights, liabilities and obligations of any local authority, in any Electricity Board, be transferred to that Board any liabilities or obligations in respect of any loan raised by the local authority, or be transferred to that Board any property forming part of a sinking fund established for the redemption of any such loan, and any property vesting in the Board, being property subject to a mortgage created for securing the repayment of any such loan, shall vest free of the mortgage. [379]

(6) References in the following provisions of this Act to bodies to whom this Part of this Act applies (not being references which expressly exclude local authorities) shall be construed, in relation to a local authority, as referring to that authority in their capacity as authorised undertakers. [380]

*General note.*—This section modifies the provisions of the preceding section to meet the special circumstances of local authorities. No matter how carefully the section is drawn points of difficulty in regard to severance are bound to arise and accordingly provision is made for their determination (see *infra*) in cases of doubt. The vesting of property may in certain circumstances be postponed until after the vesting date.

*Body to whom this Part of this Act applies.*—See s. 13, *ante*.

*Regulations.*—For the general provisions applicable thereto, see s. 64, *post*. Regulations under this section are to be laid before Parliament under s. 64 (3), *post* ; but see note thereto.

*An Electricity Board.*—This term comprises any of the following : the British Electricity Authority, any of the Area Boards and the North of Scotland Board (s. 1 (3), *ante*).

*The Minister.*—The Minister of Fuel and Power (s. 67 (1)) ; but note that the term “the said Minister” in sub-s. (4) of the present section refers not to the Minister of Fuel and Power but to the Minister of Health.

*Sub-s. (3).*—Note that in this case questions in dispute are to be referred for determination not to the Electricity Arbitration Tribunal but to the Minister of Health. This was provided after full consideration of the questions likely to be brought under review, *e.g.*, as to whether property or documents belonged to an Electricity Authority or to a local authority, or whether rights were exercisable by a local authority as such or in their capacity as authorised undertakers. In the great majority of such cases the expense of reference to the Tribunal would not be justified (see H. of C. Official Report, S.C.E., April 1, 1947, cols. 494–495).

The Minister of Health, as being the Minister having general responsibility for local government matters, is preferred to the Minister of Fuel and Power in the present connection.

*Electric Lighting Act, 1882, s. 9.*—7 Halsbury's Statutes 691. This section provides for the filling up and publication of annual statements of accounts by electricity undertakers, subject to penalty.

*Vesting date.*—Such date on or after April 1, 1948, not being less than six months after the establishment of the British Electricity Authority nor less than three months after the establishment of all the Area Boards and the definition by order of their areas, as the Minister of Fuel and Power may by order appoint. April 1, 1948, has been so appointed (ss. 14 (1), *ante*, and 67 (1), *post*, and see the notes thereto).

*Sub-s. (5).*—Note that loans and sinking fund arrangements covered by this subsection are excluded from the vesting provisions of the Act. Such loans are to be serviced by the Central Authority under s. 22 (2), *post*.

*Definitions.*—As to “authorised undertakers,” see s. 67 (1) and Sched. II, *post*. For definitions of “local authority,” “prescribed,” “lease” and “loan,” see s. 67 (1), *post*.

**16. Right of pre-emption for local authorities in respect of land vested in an Electricity Board.**—(1) Where any land of a local authority vests by virtue of this Act in an Electricity Board, the local authority shall, for a period of ten years from the date of the vesting of the land, have the right of pre-emption conferred by the subsequent provisions of this section. [381]

(2) If the Electricity Board in whom the land vests by virtue of this Act, or any other Electricity Board to whom it is subsequently transferred, desire within the said period of ten years, to dispose to any person other than an Electricity Board, whether absolutely or for a term of years, of any of that land as being land not required by the Board for the discharge of their functions under this Act, they shall before disposing of it give to the local authority at least three months' notice, stating whether they desire to dispose of it absolutely and, if not, stating the term of years for which they desire to dispose of it. [382]

(3) Where the local authority receive a notice under subsection (2) of this section and notify the Board, before the expiration of the period of three months from the date of the Board's notice, that they desire to acquire the land either absolutely or for the term of years specified in the Board's notice, as the case may be, they shall have the right and be under an obligation to acquire that land on such terms as may be agreed between the Board and the authority or, in default of agreement, as may be determined by arbitration to be fair and reasonable having regard to all the circumstances of the case. [383]

(4) The right of pre-emption conferred upon the local authority by this section shall be deemed to be an estate contract within the meaning of section ten of the Land Charges Act, 1925, and that Act and the Land Registration Act, 1925, shall have effect accordingly. [384]

*An Electricity Board.*—This term comprises any of the following : the British Electricity Authority, any of the Area Boards and the North of Scotland Board (s. 1 (3), *ante*).

*Right of pre-emption.*—A right of pre-emption becomes exercisable only where an owner subject to such a right is desirous of selling. Such a right differs from an option to purchase in that, subject to its detailed terms, an option may be exercised by the person entitled thereto whether or not the owner is desirous of selling.

Compare with the present right of pre-emption the right given on the disposal of superfluous land under the Lands Clauses Consolidation Act, 1845, ss. 128–129 (2 Halsbury's Statutes 1159).

*Notices.*—For the general provisions as to service of notices, see s. 63, *post*.

*Estate contract.*—An estate contract is a contract by an estate owner, or by a person entitled at the date of the contract to have a legal estate conveyed to him, to convey or create a legal estate, including a contract conferring, either expressly or by statutory implication, a valid . . . right of pre-emption (Land Charges Act, 1925, s. 10 ; 15 Halsbury's Statutes 534). An

estate contract is commonly called "a land charge Class C (iv)," following the classification in that Act. The address of the Land Charges Superintendent is H.M. Land Registry, Lincoln's Inn Fields, London, W.C.2.

*Land Charges Act, 1925, s. 10.*—15 Halsbury's Statutes 531 *et seq.* As to the application of this Act to registered land, see s. 23 thereof.

*Land Registration Act, 1925.*—15 Halsbury's Statutes 434. As to the registration of land charges on registered land by notice, caution or other prescribed entry under the 1925 Act, see s. 59 (2) thereof.

*Determined by arbitration.*—Arbitrations under this section will be heard and determined by the Electricity Arbitration Tribunal under the provisions of ss. 31-33, *post*.

*Definitions.*—For definitions of "local authority" and "functions," see s. 67 (1), *post*.

**17. Composite companies.**—(1) This section applies to the companies (in this Act referred to as "composite companies") who are specified in Part II of the Second Schedule to this Act, being companies who, by virtue of any enactment, supply gas, or gas and water, as well as electricity :

Provided that this section shall not apply to any such company who serve on the Minister, not later than two months after the passing of this Act, a notice stating that they do not wish this section to apply to them, and references in this Act, except in the said Schedule, to composite companies shall not be construed as referring to any company who have served such a notice. [385]

(2) The provisions of section fourteen of this Act shall, in the case of composite companies, only apply to property held or used by the company wholly or mainly in their capacity as authorised undertakers, and to rights, liabilities and obligations acquired or incurred by the company in the said capacity, and accordingly references in that section to the property, rights, liabilities and obligations of a body to whom Part II of this Act applies, or to any agreement to which any such body was a party, or to documents referring to any such body, or to legal proceedings or applications by or against any such body shall be construed as references to property held or used by the company wholly or mainly in their capacity as authorised undertakers, and rights, liabilities and obligations acquired or incurred by the company in the said capacity or, as the case may be, to agreements, documents, legal proceedings or applications of or relating to the company in their capacity as authorised undertakers, and subsection (11) of the said section shall not apply to any composite company. [386]

(3) Any question arising under this section as to whether any property is or was held or used by a composite company wholly or mainly in their capacity as authorised undertakers or whether any rights, liabilities or obligations were acquired or incurred by any such company in the said capacity or whether any agreements or documents relate to any such company in the said capacity shall, in default of agreement, be determined by arbitration under this Act, and the arbitration tribunal shall have regard to whether or not entries relating to any property, rights or liabilities were or ought to have been included in the accounts furnished by the company to the Electricity Commissioners under section nine of the Electric Lighting Act, 1882. [387]

(4) Subsections (2) and (4) of section fifteen of this Act shall apply to a composite company in like manner as they apply to a local authority, subject to the modification that for references to the Minister of Health there shall be substituted references to the Minister, and any question whether any property is or was (for the purposes of the said subsection (2) as so applied) held or used partly in the said capacity and partly in other capacities shall, in default of agreement, be determined by arbitration under this Act, and the last foregoing section shall also apply to a composite company in like manner as it applies to a local authority. [388]

(5) No part of the cash and investments of a composite company shall vest in an Electricity Board under section fourteen of this Act, and the last two foregoing subsections shall accordingly not apply thereto, but regulations shall, subject to the provisions of this Part of this Act with respect to the

final payment of dividends and interest, provide for the apportionment, as between the Board and the company, of the whole of the cash and investments of the company, together with any income accruing thereon pending such apportionment, in such shares as may be agreed between them or, in default of such agreement, determined in accordance with the regulations.

Any references in the following provisions of this Act to property which vests by virtue of this Act shall include a reference to property apportioned to an Electricity Board under this subsection. [389]

(6) Regulations may make provision for the apportionment of, and the making of financial adjustments with respect to, any liabilities incurred by a composite company partly in their capacity as authorised undertakers and partly in other capacities, and for any necessary variation of mortgages and incumbrances relating to such liabilities. [390]

(7) Where any property of a composite company which vests by virtue of this Act in an Electricity Board is subject to any mortgage or other incumbrance created for the purpose of securing a debt which does not so vest in the Board and is not apportioned as between the Board and the company, the property shall vest free of that mortgage or incumbrance. [391]

(8) The Electricity Board in whom any property, rights, liabilities or obligations of any composite company vest by virtue of this Act shall make available to the company such facilities for the examination of and the making of extracts from or copies of books, accounts and documents relating to the electricity undertaking of the company as the company may reasonably require for the purposes of this Act and for other purposes arising out of the carrying on of the company's business, and such services of officers of the Board as they may reasonably require to enable them to make use of those facilities. [392]

(9) References in the following provisions of this Act, except section twenty-six thereof, to bodies to whom this Part of this Act applies (not being references which expressly exclude composite companies) shall be construed, in relation to a composite company, as referring to that company in their capacity as authorised undertakers. [393]

*General note.*—In the Bill as originally drafted there was no provision for the separation of the gas or water activities from the electricity activities of composite companies, the intention being that the whole of the undertakings should be taken over, particularly in view of the approaching nationalisation of the gas industry. However, representations to the Government and the problem of gas holding companies caused a revision of plan, and accordingly the present section provides that only the electricity activities are to be taken over, unless the companies themselves elect to be taken over as a whole. Provision is made in the proviso to sub-s. (1), *ante*, for the mode of election.

*The Minister.*—The Minister of Fuel and Power (s. 67 (1), *post*).

*Passing of this Act.*—August 13, 1947.

*Service of notices.*—For the general provisions as to service of notices, see s. 63, *post*.

*Bodies to whom Part II of this Act applies.*—See s. 13, *ante*.

*Determined by arbitration.*—Arbitrations under this section will be heard and determined by the Electricity Arbitration Tribunal under the provisions of ss. 31–33, *post*.

*Arbitration tribunal.*—The Electricity Arbitration Tribunal (s. 31 (1), *post*).

*Electric Lighting Act, 1882, s. 9.*—7 Halsbury's Statutes 691. This section provides for the filling up and publication of annual statements of accounts by electricity undertakers, subject to penalty.

*Electricity Board.*—This term comprises any of the following: the British Electricity Authority, any of the Area Boards and the North of Scotland Board (s. 1 (3), *ante*).

*Regulations.*—For the general provisions applicable thereto, see s. 64, *post*. Regulations under this section are to be laid before Parliament under s. 64 (3), *post*; but see note thereto. As to offences against regulations, see s. 61 (2), *post*.

*Definitions.*—As to "authorised undertakers," see s. 67 (1) and Sched. II, *post*. For definitions of "companies," "enactment," "local authority" and "officers," see s. 67 (1), *post*.

**18. Disclaimer of agreements and leases.**—(1) Where any Electricity Board in whom are vested the rights, liabilities and obligations of any body to whom this Part of this Act applies, being rights, liabilities and obligations under an agreement made or varied on or after the nineteenth day of November, nineteen hundred and forty-five, are of opinion that the making

or the variation of that agreement was not reasonably necessary for the purposes of the activities of the said body or that the agreement was made or varied with an unreasonable lack of prudence on the part of the said body, the Board may, by notice in writing given to the other parties to the agreement before the expiration of three months from the vesting date, disclaim the agreement :

Provided that any of the said parties may, within the prescribed period from the date on which the notice is served, refer to arbitration under this Act the question whether or not the agreement or variation thereof was reasonably necessary as aforesaid, or was made or varied with unreasonable lack of prudence, and, on such arbitration, the arbitration tribunal shall either confirm or revoke the notice. [394]

(2) Where a notice is so given by an Electricity Board with respect to any agreement and is not revoked by the arbitration tribunal—

- (a) subsection (5) of section fourteen of this Act shall be deemed never to have applied to the agreement ;
- (b) the agreement shall be deemed to have been frustrated on the vesting date and the parties thereto for that reason to have been discharged from the further performance thereof ; and
- (c) the like consequences shall follow as between the Board and any party to the agreement who, before the date on which the notice of disclaimer becomes final, has in pursuance of the agreement, supplied goods or rendered services to the Board which the Board have accepted, or to whom, before the said date, the Board have, in pursuance of the agreement, supplied goods or rendered services which he has accepted, as would have followed if those goods or services had been supplied or rendered at the request of the Board or of that party, as the case may be, apart from the agreement, and any payments by or to the Board before the said date shall be adjusted accordingly.

For the purposes of this subsection, a person who permits another to use or enjoy any property or rights shall be deemed to render a service to him. [395]

(3) Subsection (1) of this section, but not subsection (2), shall apply to leases, and where a notice of disclaimer is given by the Board under subsection (1) with respect to any lease and is not revoked by the arbitration tribunal, the lease shall be deemed to be surrendered on the date on which the notice of disclaimer becomes final. [396]

(4) Where any lease is disclaimed under this section, the arbitration tribunal may, on the application of the Electricity Board who gave the notice or the other party to the lease, make such modifications (if any) of the provisions of the lease relating to repairing obligations or any other provisions taking effect on or within a limited time before the determination of the lease as they think just. [397]

(5) Where any agreement (other than a lease) is disclaimed under this section, then, for the purposes of the Law Reform (Frustrated Contracts) Act, 1943, the Electricity Board in whom any rights, liabilities or obligations under the agreement are or would (but for the frustration) be vested shall be deemed to have been a party to the agreement in lieu of the body from whom those rights, liabilities or obligations were or would have been transferred. [398]

(6) For the purposes of this section, a notice of disclaimer which is not revoked shall be deemed to become final on the following date, that is to say,—

- (a) if no reference to arbitration is made under subsection (1) of this section, the date on which the period for making such a reference expires :



(b) in any other case, the date on which the notice is confirmed by the arbitration tribunal. [399]

(7) This section shall not apply to any agreement or lease made or varied with the previous consent of the Electricity Commissioners given for the purpose of any enactment other than this section nor shall it apply to any agreement or lease the making or variation of which has been approved in writing by the Minister, either generally or specially, and whether before or after the date of the making or variation of the agreement or lease. [400]

*General note.*—The power of disclaimer given by this section should be read in conjunction with the provisions of s. 29, *post*, allowing the re-opening of transactions that have resulted in the dissipation of assets. The present section has, but s. 29 has not, application to local authorities.

*Any Electricity Board.*—This term comprises any of the following: the British Electricity Authority, any of the Area Boards and the North of Scotland Board (s. 1 (3), *ante*).

*Body to whom this Part of this Act applies.*—See s. 13, *ante*.

*An agreement made or varied.*—Sub-s. (1) of the present section refers only to agreements; it follows that such matters as tariff reduction and hospital subscriptions will not normally be affected as there is no agreement to disclaim (see H. of C. Official Report, S.C.E., April 1, 1947, col. 510). *Semble*, it might be otherwise if a transferring body had entered into a covenant in 1946 to make specified payments over a period. Note, however, that the term "agreement" is not defined in the Act.

The kind of agreement at which the subsection is directed is an agreement between a subsidiary company which is a transferring body under the Act and a holding company which is not, whereby the latter has been given exceptionally favourable terms before the transfer.

*November 19, 1945.*—The date when the Government's decision to nationalise the electricity supply industry was first made known.

*Notice in writing.*—For the general provisions as to service of notices, see s. 63, *post*.

*Vesting date.*—Such date on or after April 1, 1948, not being less than six months after the establishment of the British Electricity Authority nor less than three months after the establishment of all the Area Boards and the definition by order of their areas, as the Minister of Fuel and Power may by order appoint. April 1, 1948, has been so appointed (ss. 14 (1), *ante*, and 67 (1), *post*, and see the notes thereto).

*Arbitration under this Act.*—Arbitration under the present Act will be heard and determined by the Electricity Arbitration Tribunal under the provisions of ss. 31–33, *post*.

*Arbitration tribunal.*—The Electricity Arbitration Tribunal (s. 31 (1), *post*).

*Frustration and discharge.*—For the law relating to frustration as a ground of discharge of contract, see 7 Halsbury's Laws (2nd Edn.) 215 *et seq*.

*Law Reform (Frustrated Contracts) Act, 1943.*—36 Halsbury's Statutes 50. S. 1 (1) of this Act, for instance, refers to the parties to a contract having been discharged from further performance through impossibility or frustration; but for sub-s. (5) of the present section this terminology would not include the Electricity Board concerned.

*Sub-s. (7).*—The object of excluding from the scope of the section agreements or leases approved by the Minister is to avoid the shelving of projects of development, etc., which might otherwise be subject to disclaimer.

*Definitions.*—For definitions of "prescribed," "lease" and "enactment," see s. 67 (1), *post*.

## 19. Subsequent transfer of property from one Electricity Board to another.—

(1) The Minister may, whether on the application of any of the Electricity Boards concerned or without any such application, provide by order—

(a) for the transfer to any Electricity Board of any property, rights, liabilities and obligations vested by virtue of this Act in another such Board;

(b) for the modification of agreements so far as necessary for giving effect to the transfer of rights, liabilities and obligations thereunder from one such Board to another and, in a case where part only of the rights, liabilities and obligations under any agreement are transferred, for substituting for the agreement separate agreements in the requisite terms, and for any apportionments and indemnities consequent thereon;

(c) for the purpose of transferring part of the land comprised in any lease vested in any such Board to another such Board, for the severance of that lease, and for apportionments and indemnities consequent thereon;

(d) for such other financial adjustments between the Boards concerned as may be required in consequence of any such order, and for any other matters supplementary to or consequential on the matters



aforesaid for which provision appears to the Minister to be necessary or expedient :

Provided that the Minister shall consult the Central Authority before making any such order. [401]

(2) An order made under this section which affects the North of Scotland Board shall be made by the Minister and the Secretary of State jointly, and they shall consult that Board before making any such order. [402]

*The Minister.*—The Minister of Fuel and Power (s. 67 (1), *post*).

*Any of the Electricity Boards.*—"Electricity Board" comprises any of the following: the British Electricity Authority, any of the Area Boards and the North of Scotland Board (s. 1 (3), *ante*).

*Order of the Minister.*—For the general provisions applicable to orders under this section, see s. 64, *post*. Any such orders are to be laid before Parliament under s. 64 (3), *post*; but see note thereto.

*Central Authority.*—The British Electricity Authority (s. 1 (3), *ante*). For the constitution of this body, see s. 3, *ante*.

*Definitions.*—For definitions of "lease" and "North of Scotland Board," see s. 67 (1), *post*.

**20. Compensation to holders of securities of bodies other than local authorities.**—(1) Every holder of securities of any body to whom this Part of this Act applies, not being securities of a local authority or a composite company, shall be entitled to be compensated by the issue to him by the Central Authority, in accordance with the provisions of the Third Schedule to this Act, of British Electricity Stock of such amount as in the opinion of the Treasury is at the vesting date of a value equal to the value of the said securities held by him, regard being had (in estimating the value of the stock so issued) to the market value of government securities at the vesting date :

Provided that—

- (a) if the whole of the beneficial interest in any such securities was, immediately before the vesting date, vested in any body to whom this Part of this Act applies, no compensation shall be payable in respect of those securities and the securities shall be extinguished on the vesting date ;
- (b) if the holder of any such securities was such a body, but the whole of the beneficial interest was not so vested, the stock issued as aforesaid in respect of those securities shall be held by the Central Authority, and the said Schedule shall have effect as if the Authority were the holder of those securities ; and
- (c) any stock issued as aforesaid in respect of securities guaranteed by the Treasury shall be of the same nominal amount, shall carry interest at the same rates and payable at the same dates, and shall if redeemable be redeemed in the same manner and at the same times and by payment of the same amounts, as in the case of the securities. [403]

(2) For the purposes of this section, the value of any securities of any such body which were quoted in the Stock Exchange Official Daily List on all six of the following dates, that is to say, the first, fourth, fifth, sixth, seventh and eighth days of November, nineteen hundred and forty-six, shall, subject as hereinafter provided, be deemed to be the average of the mean of the quotations therefor appearing in the said list on those dates, such addition, if any, being made to that average as is necessary to make it a complete multiple of one penny :

Provided that where—

- (a) quotations for the securities appeared in the said list on any of the following dates (hereinafter referred to as "the alternative dates"), that is to say, the fifteenth day of February, the fifteenth day of March, the sixteenth day of April, the fifteenth day of

May, the fifteenth day of June, and the sixteenth day of July, nineteen hundred and forty-five ; and

- (b) the average mentioned in the foregoing provisions of this subsection is less than the average of the mean of the quotations for the securities appearing in the said list on all the alternative dates on which a quotation therefor so appeared ;

the value of the securities for the purposes of this section shall be deemed to be the average of the mean of the quotations therefor appearing in the said list on the alternative dates. [404]

(3) Where, in the case of any class of securities to which the last foregoing subsection applies, there has been at any time after the eighth day of November, nineteen hundred and forty-six, a fresh issue of securities of that class, the value of every security of that class for the purposes of this section shall, instead of being determined under the last foregoing subsection, be deemed to be the average of the values of all the securities of that class calculated on the basis that—

- (a) the value of each of the securities comprised in that issue is the price at which it was issued, and  
(b) the value of the remaining securities is the value which those securities had for the purposes of this section immediately before the issue took place. [405]

(4) Where, at any time after the eighth day of November, nineteen hundred and forty-six, any securities to which subsection (2) or subsection (3) of this section applies have been converted into securities of a different nominal value—

- (a) the value of those securities as so converted shall, for the purposes of this section, be deemed to be a value bearing to the value which the securities had for the purposes of this section immediately before the conversion took place the same proportion as the nominal value of the securities as converted bears to the nominal value of the securities immediately before the conversion took place ; and  
(b) the last foregoing subsection shall apply to securities which have been converted as aforesaid, but if a part only of a class of securities has been converted as aforesaid, the converted securities shall, for the purposes of the last foregoing subsection, be treated as securities of a different class from that of the unconverted securities. [406]

(5) Where a new class of securities has been issued at any time after the first day of November, nineteen hundred and forty-six, the value of securities of that class for the purposes of this section shall be deemed to be the price at which they were issued, and the last two foregoing subsections shall apply to any fresh issue or conversion of securities of that class. [407]

(6) If any question arises under any of the last four foregoing subsections as to the value of any securities, it shall be settled by agreement between the Minister and the stockholders' representative appointed under the next following section or, in default of such agreement, determined by arbitration under this Act. [408]

(7) For the purposes of this section, the value of any securities of any such body, not being securities to which subsection (2), (3), (4) or (5) of this section applies, shall be such value as may be agreed between the Minister and the said stockholders' representative or, in default of such agreement, as may be determined by arbitration under this Act, and the arbitration tribunal in determining the value of those securities, shall have regard, as far as may be, to the value of securities to which subsection (2) of this section applies (as determined under that subsection), being securities which, as respects all matters affecting their value, are most nearly comparable to the first named

securities, and if, in relation to any class of securities to which this subsection applies, such a fresh issue or conversion of securities as is mentioned in subsection (3) or subsection (4) of this section has occurred, the arbitration tribunal shall also have regard, as far as may be, to the manner in which the value of securities is to be determined in cases to which the said subsection (3) or subsection (4) applies. [409]

(8) In this section—

the expression “the Stock Exchange Official Daily List” means the publication known as the Stock Exchange Daily List of Officially Quoted Securities which is published by and under the authority of the Council of the Stock Exchange, London;

the expression “quotation” has the same meaning as in the said list and, accordingly, does not include the statements of the business that was done;

the expression “the mean of quotations” means the average of the two figures shown in the list on the date in question in respect of the security in question under the heading “Quotations.” [410]

(9) For the purposes of this section and the following provisions of this Part of this Act, the securities of a body to which the same rights attach shall be deemed to constitute a class of securities. [411]

*General note.*—Compensation is payable in three specific cases: (a) to private concerns; (b) to local authorities; and (c) to composite companies. This section and the next section provide for case (a) which, though first in order, is in a sense residuary.

*Body to whom the Part of this Act applies.*—See s. 13, *ante*.

*Central authority.*—The British Electricity Authority (s. 1 (3), *ante*). For the constitution of this body, see s. 3, *ante*.

*Vesting date.*—Such date on or after April 1, 1948, not being less than six months after the establishment of the British Electricity Authority nor less than three months after the establishment of all the Area Boards and the definition by order of their areas, as the Minister of Fuel and Power may by order appoint. April 1, 1948, has been so appointed (ss. 14 (1), *ante*, and 67 (1), *post*, and see the notes thereto).

*The Minister.*—The Minister of Fuel and Power (s. 67 (1), *post*).

*Determined by arbitration.*—Arbitrations under this section will be heard and determined by the Electricity Arbitration Tribunal under the provisions of ss. 31–33, *post*.

*Definitions.*—As to “composite company,” see s. 17 (1), *ante*. As to “stockholders’ representative,” see s. 21 (1), *post*. For definitions of “securities” and “local authority,” see s. 67 (1), *post*.

**21. Appointment of stockholders’ representative.**—(1) In the case of any body to whom this Part of this Act applies, being a body in respect of whose securities compensation is payable under the last foregoing section, there shall be appointed, before such date not later than the vesting date as may be prescribed, an individual, in this Act referred to as the “stockholders’ representative,” to represent the interests of all holders of securities of that body in connection with the determination of the amount of compensation payable in respect of those securities, any payment made after the vesting date of interest or dividend in respect of those securities, and any other matters arising under this Part of this Act affecting the interests of the holders of those securities, and it shall be the duty of the stockholders’ representative, in carrying out his functions under this Part of this Act, to represent the interests of the holders of those securities. [412]

(2) The stockholders’ representative shall be appointed, in the prescribed manner, by the holders of the securities of the body in question:

Provided that—

(a) if those holders of securities fail to appoint a stockholders’ representative before the prescribed date, the Minister shall appoint such a representative;

(b) in the case of securities issued by the Central Electricity Board, any joint electricity authority, or any joint board of local authorities, the stockholders’ representative shall be appointed by the Minister. [413]

(3) The Minister shall pay out of moneys provided by Parliament to a stockholders' representative such remuneration (whether by way of salary or fees) and such allowances, and such expenses incurred by him in the exercise of his functions, as may be determined by the Minister with the approval of the Treasury, and any sums paid by the Minister under this subsection shall be repaid to him by the Central Authority on demand :

Provided that, in the case of a body whose property, rights, liabilities and obligations vest by virtue of this Act in the North of Scotland Board, the said sums shall be repaid to the Minister by the North of Scotland Board. [414]

(4) Regulations shall make provision—

- (a) as to the mode of appointment of a stockholders' representative and the notices to be given thereof ;
- (b) as to tenure and vacation of office by a stockholders' representative and the appointment, where the office falls vacant, of a new stockholders' representative ;
- (c) for any other matters relating to the office of stockholders' representative for which provision appears to the Minister to be necessary or expedient, including the exercise of functions through agents.

The regulations made with respect to the matters mentioned in paragraphs (a) and (b) hereof shall be made not less than two months before the date prescribed for the purposes of subsection (1) of this section, but without prejudice to the varying of any such regulations to such extent as may subsequently appear to the Minister to be necessary. [415]

(5) The Electricity Board in whom any property, rights, liabilities or obligations of any body vest by virtue of this Act, and any person to whom any such property, rights, liabilities or obligations which have so vested have been subsequently disposed of, shall make available to the stockholders' representative such facilities for the examination of and the making of extracts from or copies of books, accounts and documents of the body as he may reasonably require for the purposes of his duties, and such services of persons who were officers of the body and are in the employment of the Board or of the said person as the stockholders' representative, may reasonably require for those purposes. [416]

*Body to whom this Part of this Act applies.*—See s. 13, *ante*.

*Vesting date.*—Such date on or after April 1, 1948, not being less than six months after the establishment of the British Electricity Authority nor less than three months after the establishment of all the Area Boards and the definition by order of their areas, as the Minister of Fuel and Power may by order appoint. April 1, 1948, has been so appointed (ss. 14 (1), *ante*, and 87 (1) *post*, and see the notes thereto).

*Central Authority.*—The British Electricity Authority (s. 1 (3), *ante*). For the contribution of this body, see s. 3, *ante*.

*Regulations.*—On September 24, 1947, the Minister of Fuel and Power made under the present section the Electricity (Stockholders' Representatives) Regulations, 1947, S. R. & O., 1947, No. 2076, amended on October 24, 1947, by the Electricity (Stockholders' Representatives) (No. 2) Regulations, 1947, S. R. & O., 1947, No. 2277.

For the general provisions applicable to regulations under this section, see s. 64, *post*. Any such regulations are to be laid before Parliament under s. 64 (3), *post*; but see note thereto. As to offences against regulations, see s. 61 (2), *post*.

*Definitions.*—For definitions of "securities," "prescribed," "functions," "local authority" and "North of Scotland Board," see s. 87 (1), *post*.

### *Compensation to Local Authorities*

**22. Compensation to local authorities.**—(1) The Central Authority shall, by way of compensation for the vesting in them or in any other Electricity Board of property and rights of any local authority, and in lieu of any other compensation in respect of that vesting, make payments to the authority in accordance with this and the two next following sections. [417]

(2) Where the local authority have raised a loan wholly or partly for the purposes of their functions as authorised undertakers or have advanced money

for those purposes out of any consolidated loans fund or mortgage loans pool established by them or out of any other moneys held by them, and, in pursuance of the arrangements in force immediately before the vesting date for the redemption of the loan and the payment of interest thereon or, as the case may be, for the repayment of the advance and the payment of interest thereon, any amounts would, but for this Act, have fallen, on or after the vesting date, to be debited in the accounts of the local authority in their capacity as authorised undertakers, the Central Authority shall, subject to the provisions of this section, pay those amounts to the local authority at the times at which, but for this Act, those amounts would have fallen to be debited in the accounts of the local authority in their capacity aforesaid. [418]

(3) Where the local authority have before the vesting date made arrangements for the making of financial adjustments, as between the accounts of the local authority in their capacity as authorised undertakers and any other account of the local authority, in respect of any other transaction or matter affecting both their functions as authorised undertakers and other functions of the authority, and in pursuance of those arrangements any amounts would, but for this Act, have fallen, on or after the vesting date, to be debited or credited in the accounts of the local authority in their capacity as authorised undertakers and credited, or, as the case may be, debited, in some other account of the local authority, the Central Authority shall, subject to the provisions of this section, pay those amounts to the local authority or be entitled to receive those amounts from the authority, as the case may be, at the times at which, but for this Act, those amounts would have fallen to be debited or credited in the accounts of the local authority in their capacity aforesaid :

Provided that this subsection shall not apply in relation to any apportionment of establishment charges between the accounts of the local authority in their capacity aforesaid and other accounts of the authority. [419]

(4) The Central Authority and the local authority may agree or the Minister of Health may, on the application of either party in default of such agreement, determine that, having regard to the circumstances in which any such arrangements were made and the circumstances arising under this Act, the last foregoing subsection shall not apply to those arrangements or shall apply thereto with such modifications as to the payments to be made by the Central Authority or the local authority as may be so agreed or determined, and the said subsection shall have effect subject to any such agreement or determination.

Any other question arising under either of the two last foregoing subsections as to the payments to be made thereunder shall, in default of agreement, be determined by the Minister of Health. [420]

(5) Any payment made by the Central Authority or the local authority under the foregoing provisions of this section which would, but for this Act, have been debited or credited as a capital payment, or any payment made in respect of the liability for the redemption of a loan or the repayment of an advance, shall be deemed to be a capital payment, and any other such payment shall be deemed to be an annual payment. [421]

*General note.*—This and the next two succeeding sections set out the three heads under which "compensation" is payable to local authorities. See the Preliminary Note, *ante*, and the notes to s. 23, *post*.

*Central Authority.*—The British Electricity Authority (s. 1 (3), *ante*).

*Electricity Board.*—This term comprises any of the following: the British Electricity Authority, any of the Area Boards and the North of Scotland Board (s. 1 (3), *ante*).

*Sub-s. (2).*—Note the comprehensive wording of this subsection and the specific reference to mortgage loans pools, inserted in an endeavour to ensure that the appropriate portion of any loans raised partly for electricity and partly for other purposes is to be serviced by the Central Authority.

*Vesting date.*—Such date on or after April 1, 1948, not being less than six months after the establishment of the British Electricity Authority nor less than three months after the establishment of all the Area Boards and the definition by order of their areas, as the Minister of

Fuel and Power may by order appoint. April 1, 1948, has been so appointed (ss. 14 (1), *ante*, and 67 (1), *post*, and see the notes thereto).

*Definitions.*—As to “authorised undertakers,” see s. 67 (1) and Sched. II, *post*. For definitions of “local authority,” “loan” and “functions,” see s. 67 (1), *post*.

### 23. Further compensation to local authorities in respect of severance.—

There shall be paid by the Central Authority to local authorities, by way of compensation in respect of the severance of their electricity undertakings from their other activities, the sum of five million pounds, and the said sum shall be divided among such of the said local authorities as satisfy the prescribed conditions, and the amounts to be paid to the individual authorities shall be determined in such manner and in accordance with such principles as may be prescribed. [422]

*General note.*—Whilst there was general agreement that local authorities should not be put in a position of making money out of their electricity undertakings, a particular demand for compensation was made, based upon four considerations. First, some local authorities used the profits of their electricity undertakings for relief of rates. Opinion as to the propriety of such a course has long been divided and only some 20 per cent. of authorities took this course. The Government felt unable to make compensation in such cases because, it argued, the money had been taken out of the pockets of the electricity consumers.

Next, local authorities were entitled to a complicated right of set-off in Income Tax matters; they paid interest on loans and deducted Income Tax on the payments, having to pay the tax deductions to the Inland Revenue only if the trading income on which they paid tax fell short of the interest. The amount of tax to be paid over was the difference between the tax paid on the income in question and the tax payable on the interest. However, this set-off which was of recent origin did not apply in all cases and even where it applied might be negligible in its effects (see H. of C. Official Report, S.C.E., April 17, 1947, cols. 646–647).

The third consideration was a minor point relating to superannuation rights, but the fourth was substantial and arose in connection with the contributions of the electricity undertakings towards central establishment charges, which would, of course, be lost after the transfer to the new Authorities. Overhead charges over the diminished sphere of the local authority would then be noticeably higher. Here, then, on the question of severance was a proper case for compensation.

In estimating the extent to which compensation would be required, the Minister of Fuel and Power gave the relevant Standing Committee of the House of Commons his idea of the future practical organisation to be set up.

“We have to use,” he said, “as much of the existing organisation, administrative and technical, as is possible when the change is effected. The local authority electricity undertakings have efficient administrative organisations—their offices, clerical employees, etc. They are familiar with all the proceedings. It would be a mistake if the Central Authority or the Area Boards, when they are created, should proceed to create new organisations if the existing one can be made available, and is adequate for the purpose.

“Therefore, to the extent that a local authority electricity administrative section can be utilised, either by the Area Board or by the Central Authority, and to that extent all its charges are met, a great many of these overhead charges difficulties would be surmountable. Adjustments can be made to meet the difficulty” (H. of C. Official Report, S.C.E., April 17, 1947, cols. 647–648).

A sum of £5,000,000 was therefore decided upon to meet the claim to compensation for severance, but the Minister explained that this was intended as an all-embracing figure:

“It would be on grounds of severance, but we take account of the knowledge we have that severance alone would not justify the payment of £5,000,000. Having regard to these other items which have been referred to, we think that £5,000,000 would meet the bill. . . . In our view, any loss sustained, whether due to Income Tax set-off, superannuation or severance, would be adequately met by this sum; I do not pretend that every little claim that could be presented by a local authority in respect of Income Tax set-off, superannuation, etc., would be met. It might be discovered that those were unreasonable claims. In our view, it would be reasonable to devote this sum of £5,000,000 to meet substantially the claims of the local authorities” (H. of C. Official Report, S.C.E., April 17, 1947, col. 649).

*Central Authority.*—The British Electricity Authority (s. 1 (3), *ante*). For the constitution of this body, see s. 3, *ante*.

*Definitions.*—For definitions of “local authority” and “prescribed,” see s. 67 (1), *post*.

### 24. Further compensation to local authorities in respect of capital works.—

Where the Minister is satisfied, on the application of a local authority to whom this Part of this Act applies, that the authority incurred at any time after the nineteenth day of November, nineteen hundred and forty-five, in respect of works approved by the Electricity Commissioners expenditure properly chargeable to capital account, being expenditure incurred with the consent of the Electricity Commissioners (if such consent was required) and not defrayed out of moneys borrowed or advanced for the purposes of the electricity undertaking or out of the revenue or reserves of the electricity undertaking, the Minister may direct the payment by the Central Authority to the



local authority of such sums by way of compensation, not exceeding the amount of the expenditure aforesaid, as may be determined by him :

Provided that no payment shall be directed to be made under this section in respect of any expenditure in respect of which the Central Authority are liable to make payments under subsection (3) of the last but one foregoing section. [423]

*Object of section.*—This section is inserted with a view to providing local authorities with additional security against loss on capital expenditure undertaken during the transition period beginning on November 19, 1945, and ending with the vesting date.

*The Minister.*—The Minister of Fuel and Power (s. 67 (1), *post*).

*Local authority.*—For definition, see s. 67 (1), *post*.

*November 19, 1945.*—The date when the Government's decision to nationalise the electricity supply industry was first made known.

*Central Authority.*—The British Electricity Authority (s. 1 (3), *ante*). For the constitution of this body, see s. 3, *ante*.

### *Compensation to composite companies*

**25. Compensation to composite companies.**—(1) Every composite company shall be entitled to be paid by the Central Authority, by way of compensation for the vesting in that Authority or in any other Electricity Board of property and rights of the company, and in lieu of any other compensation in respect of that vesting, an amount calculated as follows :—

- (a) the aggregate value of all the securities of the company shall be ascertained in accordance with subsections (2) to (9) of section twenty of this Act, subject to the modification that for the references in subsections (6) and (7) to the stockholders' representative there shall be substituted references to the company ;
- (b) there shall be ascertained the proportion which the average net revenue earned by the electricity undertaking in respect of the last three complete financial years before the tenth day of January, nineteen hundred and forty-seven, bears to the average net revenue earned in respect of those years by the company's undertaking as a whole ;
- (c) the amount of the compensation shall be the aggregate of the following amounts—

- (i) an amount bearing to the aggregate value of the said securities the same proportion as the said average net revenue of the electricity undertaking bears to the said average net revenue of the company's undertaking as a whole,

- (ii) an amount, by way of compensation in respect of the severance of the electricity undertaking from the remainder of the company's undertaking, consisting of a sum of five shillings for each complete one thousand of the units of electricity which, in accordance with the figures accepted by the Electricity Commissioners for the purposes of section seven of the Electricity (Supply) Act, 1922, were sold (within the meaning of that section) by the company during the year nineteen hundred and forty-six.

[424]

(2) Any question arising under paragraph (b) of the last foregoing subsection shall, in default of agreement between the company and the Minister, be determined by arbitration under this Act. [425]

(3) The right of a composite company to compensation under this section shall be satisfied by the issue to the company of British Electricity Stock of such amount as in the opinion of the Treasury is at the vesting date of a value equal to the amount calculated under subsection (1) of this section, regard being had (in estimating the value of the stock so issued) to the market value of government securities at the vesting date. [426]



(4) If, in the case of any composite company, the amount of compensation payable to the company under this section has been determined before the vesting date, the British Electricity Stock to be issued in respect thereof shall be issued on that date, and in any other case the British Electricity Stock shall be issued as soon as the amount of that compensation has been determined. [427]

(5) Interest on any stock so issued after the vesting date shall begin to accrue as from the vesting date, and the Central Authority shall, on such dates as the Minister may direct, make to the company payments of interest not exceeding the amount which, in the opinion of the Central Authority, will be found to have accrued on the British Electricity Stock ultimately issued in satisfaction of the compensation.

If the amounts paid to any company by the Central Authority under this subsection are equal to or greater than the amount of interest which is found to have accrued on the said stock for the period beginning with the vesting date and ending immediately before the date of the issue of the stock, the interest so found to have accrued shall be treated as discharged, and if the amount paid as aforesaid is less than the amount found to have accrued as aforesaid, the amount so found to have accrued shall be treated as discharged to the extent of the amount so paid, and the balance shall be added to and treated as part of the interest (being interest accruing on and after the issue of the stock) which first falls to be paid after the issue of that stock. [428]

(6) Regulations may make provision—

(a) for entitling the holder of any debentures, debenture stock, preference shares or preference stock of a composite company, by notice given within the prescribed period, to require the company to transfer to him such amount of the British Electricity Stock issued to the company under this section as is attributable to the value of the said securities held by him, and for the cancellation of those securities to a proportionate extent; and

(b) otherwise for the protection of mortgagees and incumbrancers of a composite company. [429]

*General note.*—This section, dealing with the compensation of composite companies, is a corollary to s. 17, *ante*, which regulates the vesting provisions in such cases. The present section sets out, by reference to s. 20, *ante*, the formula for the assessment of compensation in the case of composite companies.

*Composite company.*—See s. 17 (1), *ante*, and Sched. II, Part II, *post*. In the present section the term “the company” is used to refer to “every composite company,” mentioned in the opening words of the section.

*Central Authority.*—The British Electricity Authority (s. 1 (3), *ante*). For the constitution of this body, see s. 3, *ante*.

*Electricity Board.*—This term comprises any of the following: the British Electricity Authority, any of the Area Boards and the North of Scotland Board (s. 1 (3), *ante*).

*January 10, 1947.*—The date of publication of the Bill that led to the present Act.

*Electricity (Supply) Act, 1922, s. 7.*—7 Halsbury's Statutes 783. By this section “units of electricity sold” means all units generated or purchased by a joint electricity authority or authorised undertaker less (a) those used in the generating station, (b) those lost in transmission or distribution, and (c) those sold in bulk to authorised undertakers.

*Determined by arbitration.*—Arbitrations under this section will be heard and determined by the Electricity Arbitration Tribunal under the provisions of ss. 31–33, *post*.

*British Electricity Stock.*—As to the issue of this stock, see s. 20 (1), *ante*, and Sched. III, *post*.

*Vesting date.*—Such date on or after April 1, 1948, not being less than six months after the establishment of the British Electricity Authority nor less than three months after the establishment of all the Area Boards and the definition by order of their areas, as the Minister of Fuel and Power may by order appoint. April 1, 1948, has been so appointed (ss. 14 (1), *ante*, and 67 (1), *post*, and see the notes thereto).

*Regulations.*—Up to the time of going to press, no regulations under this section had been made.

For the general provisions applicable to regulations under this section, see s. 64, *post*. Any such regulations are to be laid before Parliament under s. 64 (3), *post*; but see note thereto. As to offences against regulations, see s. 61 (2), *post*.

*Notice to be given.*—For the general provisions of the Act as to notices, see s. 63, *post*.

*Definitions.*—As to “stockholders’ representative,” see s. 21, *ante*. For definitions of “net revenue,” “financial year,” “securities” and “prescribed,” see s. 67 (1), *post*.

*Control of Dividends and Interest and Safeguarding of Assets pending transfer*

**26. Control of dividends, interest and other payments.**—(1) Where any body to whom this Part of this Act applies, being a company, have paid pursuant to a resolution passed after the tenth day of January, nineteen hundred and forty-seven, interest or a dividend on any of their securities in respect of the last complete financial year before the said day or any subsequent period, being payments which, regard being had to any interest or interim dividend paid before the said day in respect of that year or period, are in excess of the payments of interest or dividend permitted under this section, all persons who were directors of the body at the time when the resolution of the directors was passed authorising or recommending the payments shall, subject to the provisions of this section, be liable to pay to the Central Authority an amount equal to the total amount of the excess. [430]

(2) The payments of interest or dividend permitted under this section are as follows :—

- (a) in the case of securities in respect of which rates of interest are fixed, payments at those rates ;
- (b) in the case of securities in respect of which rates of preferential dividend are fixed, but which give no other rights to participate in the profits of the body, payments at those rates ; or
- (c) in the case of any other class of securities, payments of dividend at a rate not exceeding four per cent. per annum or the annual rate paid on that class of securities in respect of the last complete financial year in respect of which a final dividend was paid before the said tenth day of January, nineteen hundred and forty-seven, whichever is the higher :

Provided that :

- (i) such payments shall only be made out of the net revenue of the body for the period in respect of which the payment is made, or out of any funds applicable in accordance with the normal practice for the purpose of maintaining interest payments and equalising rates of dividend, and any payment shall, so far as it is made otherwise than out of that revenue, or out of those funds, not be permitted under this section ; and
- (ii) where a fresh issue has been made after the said date of securities of a class mentioned in paragraph (c) hereof, being a class on which the annual rate of dividend paid in respect of the said last complete financial year exceeded four per cent. per annum, the payments of dividend permitted under this section on the securities so issued shall not, except with the approval of the Minister, exceed a rate of four per cent. per annum. [431]

(3) Where any such body as aforesaid have, without the approval of the Minister, paid after the tenth day of January, nineteen hundred and forty-seven, a dividend in respect of any period prior to the last complete financial year before the said day, all persons who were directors of the body at the time when the resolution of the directors was passed authorising or recommending the payments shall, subject to the provisions of this section, be liable to pay to the Central Authority an amount equal to the total amounts of the payments :

Provided that this subsection shall not apply to payments of dividend on cumulative preference shares or stock, being payments which are required to be made in priority to the payment of any dividend on ordinary capital and are made out of the net revenue of the body for the said last complete financial year or any subsequent period. [432]

(4) Where, at any time after the tenth day of January, nineteen hundred and forty-seven, any such body as aforesaid have, without the approval of the Minister,—

- (a) made any payments to their members for the purpose of reducing the share capital of the body otherwise than by redemption of any redeemable preference shares ;
- (b) made any other payments to their members out of capital moneys ; or
- (c) distributed assets other than money to their members ;

all persons who were directors of the body at the time when the resolution of the directors was passed authorising or recommending the payments or distribution shall, subject to the provisions of this section, be liable to pay to the Central Authority an amount equal to the total amount of the payments or, as the case may be, the total value of the assets distributed :

Provided that this subsection shall not apply to any such payment or distribution to any such member otherwise than in his capacity as a member.

**[433]**

(5) Where, at any time after the said day, any such body as aforesaid have redeemed any securities which the body were not under an obligation to redeem before the vesting date, or made payments in respect of the redemption of any securities which exceed the minimum payments required to satisfy the rights existing on the said day of the holders of the securities, all persons who were directors of the body at the time when the resolution of the directors authorising or recommending the redemption or the payments in respect thereof was passed shall, subject to the provisions of this section, be liable to pay to the Central Authority—

- (a) in the case of securities which the body were not obliged to redeem, the amount (if any) by which the sums paid in respect of the redemption of those securities exceed the compensation which would have been payable under this Part of this Act (but for the redemption) to the holders of those securities ; or
- (b) in the case of securities which the body were obliged to redeem but for which the payments made exceeded the said minimum payments, an amount equal to the total amount of the excess. **[434]**

(6) For the purposes of this section—

- (a) any payment by a body to its members in their capacity as members out of the net revenue of the body shall be deemed to be a payment of dividend ; and
- (b) any transaction the effect of which is that assets of a body are transferred to any person otherwise than in the capacity of a member of the body, and the consideration for such transfer is given to the members of the body or any class thereof, shall be deemed to be a distribution of those assets to the members of the body or that class thereof. **[435]**

(7) Any claim under this section by the Central Authority against the directors of any such body as aforesaid shall be made before the expiration of a period of twelve months beginning with the vesting date, and if so made, shall be determined by arbitration under this Act, and, if the arbitration tribunal decides the claim in favour of the Central Authority, it shall make such orders against all or any of the said directors in respect of their liability on the claim as it thinks just, having regard to all the circumstances. **[436]**

(8) References in this section to any payments of interest or dividend made or permitted to be made by any body shall be construed as references to the gross amounts of those payments, that is to say, to the amounts thereof before any deduction is made therefrom in respect of income tax, and, if any such payment has been made by a body without deduction of income

tax, the amount paid shall be deemed for the purposes of this section to be a net amount paid after deduction of income tax, and the gross amount of that payment for the purposes of this section shall be calculated accordingly :

Provided that, in determining the amount recoverable under this section from the directors of any body in respect of payments of interest or dividend made by that body, there shall be deducted from the amount which would, but for this proviso, be so recoverable a sum equal to the income tax chargeable on that amount at the standard rate for the year in which the payments became due. [437]

(9) This section shall, in relation to any body whose property, rights, liabilities and obligations vest by virtue of this Act in the North of Scotland Board, have effect with the substitution for references to the Central Authority of references to the North of Scotland Board. [438]

(10) This section shall, in relation to any composite company, have effect subject to the following modifications :—

- (a) subsections (1), (3), (4) and (5) shall only apply to payments and distributions made, and redemptions carried out, before the vesting date ;
- (b) any liabilities arising under this section shall be liabilities of the company and not of the directors ; and
- (c) any such liability shall be reduced by applying thereto the proportion ascertained under paragraph (b) of subsection (1) of section twenty-five of this Act. [439]

*Object of section.*—Despite the penal character of sub-s. (1), the underlying object of this section is to give directors and electricity companies some guidance as to the dividends and interest that may properly be paid in the last accounting period.

In Standing Committee of the House of Commons the Parliamentary Secretary to the Ministry of Fuel and Power gave an assurance, when the present section was considered, that there was no intention of treating companies and other bodies differently because of their status in the eyes of the Government, either politically or as an economic factor (see H. of C. Official Report, S.C.E., April 22, 1947, col. 686).

January 10, 1947.—The date of publication of the Bill that led to the present Act.

*Central Authority.*—The British Electricity Authority (s. 1 (3), *ante*). For the constitution of this body, see s. 3, *ante*.

*The Minister.*—The Minister of Fuel and Power (s. 67 (1), *post*).

*Distributed assets other than money.*—Sub-s. (4) (c) would, for instance, prevent the disposal of assets by distribution of bonuses in the form of investments which had been built up.

*Vesting date.*—Such date on or after April 1, 1948, not being less than six months after the establishment of the British Electricity Authority nor less than three months after the establishment of all the Area Boards and the definition by order of their areas, as the Minister of Fuel and Power may by order appoint. April 1, 1948, has been so appointed (ss. 14 (1), *ante*, and 67 (1), *post*, and see the notes thereto).

*Determined by arbitration.*—Arbitrations under this section will be heard and determined by the Electricity Arbitration Tribunal under the provisions of ss. 31–33, *post*.

*Sub-s. (7).*—Liability under sub-s. (1), etc., is upon “all persons who were directors of the body at the time when the resolution of the directors was passed” and this would include absent directors and directors who had no part in passing the resolution. Nevertheless, under the present subsection the Electricity Arbitration Tribunal is empowered to make “such orders against all or any of the said directors . . . as it thinks just, having regard to all the circumstances.” Hence, a director who voted against the passing of the dividend in question might be exonerated altogether by having no order made against him by the Tribunal, or in other circumstances the loss might be apportioned. In addition, the Tribunal may order that part only of the loss shall be recoverable.

*Appeal to the Court of Appeal.*—An appeal lies to the Court of Appeal on any question of law or fact from any determination or order of the arbitration tribunal on a claim under this section against the directors of a body to whom Part II of the Act applies (s. 32 (3), *post*). Note also the provisions of the same section for stating special cases for determination by the Court of Appeal.

*Composite company.*—See s. 17 (1), *ante*, and Sched. II, Part II, *post*.

*Definitions.*—For definitions of “company,” “financial year,” “net revenue” and “North of Scotland Board,” see s. 67 (1), *post*.

**27. Final payment of dividends and interest.**—(1) As soon as possible after the vesting date, there shall, in the case of any body to whom this Part of this Act applies other than a local authority or a composite company, be ascertained and certified by an auditor appointed by the Minister after

consultation with the Central Authority and the stockholders' representative—

- (a) the net revenue of the body for the final financial period ;
- (b) the total gross amounts paid by the body by way of interest or interim dividend on any securities in respect of the final financial period ; and
- (c) the amount (if any) by which the said net revenue exceeds the said total amounts ;

and the Central Authority shall pay to the stockholders' representative the amount referred to in paragraph (c) hereof.

In appointing an auditor under this subsection in the case of any body, the Minister shall first offer the appointment to one of the auditors who signed the last balance sheet of the body or examined that balance sheet on behalf of the Electricity Commissioners, and there shall be paid to the auditor out of moneys provided by Parliament such remuneration (whether by way of salary or fees) and such allowances as the Minister may, with the approval of the Treasury, determine, and the amount of the remuneration and allowances shall be repaid to the Minister by the Central Authority on demand.

[440]

(2) The Central Authority, if they think fit, may, before the auditor's certificate is given, make payments to the stockholders' representative on account. [441]

(3) The stockholders' representative shall apply the sums paid to him under the foregoing provisions of this section (so far as they will go) for the following purposes and in the following order of priority :—

- (a) in making interest payments on any debentures or debenture stock of the body, which have accrued up to the vesting date and have not been paid, at the rates permitted under the last foregoing section ;
- (b) in making such a distribution as is mentioned in the next following subsection to the holders of other securities, if any, of the body ; and
- (c) in repaying the balance, if any, to the Central Authority. [442]

(4) The distribution falling to be made under paragraph (b) of the last foregoing subsection shall be a distribution under which the holders of the securities there referred to become entitled to the same gross amounts as they would have become entitled to if—

- (a) the statutory or other provisions relating to the body had permitted payments of interest or dividend in respect of the final financial period ;
- (b) the body had had available for distribution the sums paid to the stockholders' representative under this section less the amount applied in making the payments mentioned in paragraph (a) of the last foregoing subsection ; and
- (c) the body had applied the amount so available for distribution, or so much thereof as was required for the purpose, in making payments of interest or dividend for the final financial period, at the rates permitted under the last foregoing section, to the holders of the securities in question, in the proper order of priority, and according to their respective rights, due regard being had to any interest or interim dividend already paid in respect of the final financial period and all necessary adjustments being made where the said period is not a period for which interest or dividend would be payable under the statutory or other provisions relating to those securities :

Provided that the amounts to which the holders would have become entitled by way of interest or dividend for the final financial period in the

event contemplated by paragraph (c) of this subsection shall be computed as if the amounts deducted in respect of income tax from the payments mentioned in paragraph (a) of the last foregoing subsection and from any payments made under paragraph (b) of that subsection in respect of any securities were not available for paying any other interest or dividend. [443]

(5) Where the sums paid to the stockholders' representative under the foregoing provisions of this section are insufficient to enable him—

- (a) to make the interest payments referred to in paragraph (a) of subsection (3) of this section at the maximum rates permitted under the last foregoing section ; and
- (b) to distribute to the holders of the securities referred to in paragraph (b) of that subsection gross amounts equal to payments of interest or dividend on those securities at the maximum rates so permitted ;

and the body possessed immediately before the vesting date funds applicable in accordance with the normal practice for the purpose of maintaining payments of interest and equalising rates of dividend, the Central Authority shall pay to the stockholders' representative an additional amount equal to the total amount of the said funds so possessed or to the total amount of the said deficiency, whichever is the less, and the stockholders' representative shall apply that amount in like manner as the other sums paid to him under this section. [444]

(6) The persons who receive any payment made by a stockholders' representative under the foregoing provisions of this section, shall, subject to the provisions of the next following subsection, hold the payment in the same right and on the same trusts and subject to the same powers, privileges, charges and liabilities as those in, on, or subject to which, any payment of interest or dividend in respect of the securities in question would have been held by them. [445]

(7) Where any body to whom this Part of this Act applies were the holder of, or had any interest in, any securities of another such body the Central Authority shall have the like right to receive and hold, or benefit from, a payment under paragraph (a) or paragraph (b) of subsection (3) of this section as they would have had if they had been the holder of, or had had that interest in, those securities :

Provided that, in the case of any such body other than a local authority, the gross amounts of any such payments or of the benefit therefrom shall be included in the net revenue of the body for the final financial period for the purposes of this section. [446]

(8) Where, before the vesting date, there became due from any body to whom this Part of this Act applies, other than a local authority, any payment by way of interest or dividend or any payment by way of a redemption of any security, and, by reason only that it was not possible to discover the person entitled thereto, or that the title to the payment had not been established, or that a cheque or warrant issued for the purpose of effecting the payment had not been encashed, that payment was not made before the vesting date, the liability in respect of that payment shall pass to the Central Authority. [447]

(9) Where the stockholders' representative is for any reason unable to effect payment of any sum falling to be paid by him under this section, or where a receipt cannot effectively be given for any such sum, the stockholders' representative may pay that sum to the Central Authority and, on the said sum being so paid to the Authority, the liability of the stockholders' representative for the payment of that sum shall pass to the Central Authority. [448]

(10) This section shall, in relation to any body whose property, rights, liabilities and obligations vest by virtue of this Act in the North of Scotland



Board, have effect with the substitution for references to the Central Authority of references to the North of Scotland Board and for the references to the Minister of references to the Secretary of State. [449]

(11) The following provisions shall have effect in the case of a composite company, that is to say :—

- (a) there shall be ascertained and certified as soon as possible after the vesting date by an auditor appointed by the Minister the net revenue of the company for the final financial period ;
- (b) there shall be ascertained and certified by the said auditor as soon as possible after the vesting date the amount required to enable the company to make payments of interest or dividend in respect of the final financial period on all their securities at the full rates permitted under the last foregoing section, assuming that the statutory or other provisions relating to the company permitted payments of interest or dividend in respect of that period and due regard being had to any interest or interim dividend already paid in respect of that period ; and
- (c) the said net revenue shall not, except to the extent (if any) to which it exceeds the amount ascertained and certified under paragraph (b) hereof, be subject to apportionment as between the company and the Electricity Board concerned under the foregoing provisions of this Part of this Act relating to the apportionment of the cash and investments of composite companies.

The provisions of subsection (1) of this section relating to the appointment of an auditor, except the requirement as to consultation with the stockholders' representative, shall apply to an auditor appointed under this subsection and there shall be paid to the auditor by the Central Authority such remuneration (whether by way of salary or fees) and such allowances as the Minister may with the approval of the Treasury determine. [450]

(12) In this section the expression "final financial period" means such part of the financial year during which the vesting date occurs as precedes that date :

Provided that, where any body has not made the payments of interest or dividends permitted under section twenty-six of this Act in respect of the last complete financial year before the vesting date, the said expression means that year together with such part of the financial year during which the vesting date occurs as precedes the vesting date. [451]

*General note.*—The principal provisions of this section do not apply to local authorities or to composite companies, but affect the residuary undertakings to which ss. 20 and 21, *ante*, apply. Note, however, sub-s. (11), *supra*, in relation to composite companies.

*Vesting date.*—Such date on or after April 1, 1948, not being less than six months after the establishment of the British Electricity Authority nor less than three months after the establishment of all the Area Boards and the definition by order of their areas, as the Minister of Fuel and Power may by order appoint. April 1, 1948, has been so appointed (ss. 14 (1), *ante*, and 67 (1), *post*, and see the notes thereto).

*Composite company.*—See s. 17 (1), *ante*, and Sched. II, Part II, *post*.

*Central Authority.*—The British Electricity Authority (s. 1 (3), *ante*).

*Electricity Boards.*—This term comprises any of the following : the British Electricity Authority, any of the Area Boards and the North of Scotland Board (s. 1 (3), *ante*).

*Definitions.*—As to "stockholders' representative," see s. 21, *ante*. For definitions of "local authority," "net revenue," "securities," "North of Scotland Board," "company" and "financial year," see s. 67 (1), *post*.

**28. Income tax provisions.**—(1) This section shall be construed as one with the Income Tax Acts. [452]

(2) The gross amounts of any payments made by a stockholders' representative under the last foregoing section shall be deemed to be income for all the purposes of the Income Tax Acts, and the stockholders' representative making the payments shall deduct income tax therefrom at the standard rate for the year in which the payments become due and any amounts so deducted



shall, notwithstanding anything in the Income Tax Acts, be paid over to the Central Authority for their own use and benefit. [453]

(3) If—

- (a) the payments of any interest of money, annuity or other annual payment charged with tax under Schedule D made by a body to whom this Part of this Act applies other than a local authority or a composite company in the year or years of assessment falling wholly or partly within the final financial period as defined by the last foregoing section ; plus
- (b) any payments made by the stockholders' representative to the holders of securities of the body under the last foregoing section being securities bearing interest ;

together exceed—

- (i) the total income of the body for the said year or years ; plus
- (ii) the total of the assessments made for the said year or years under Rule 21 of the General Rules in respect of payments by the body,

the said Rule 21 shall have effect as if a payment of a gross amount equal to the excess had been made by the Central Authority, as if that payment were a payment of interest of money charged with tax under Schedule D not payable out of profits or gains brought into charge to tax and as if the Central Authority had deducted tax at the appropriate rates in making that payment :

Provided that, in calculating whether there is such an excess as aforesaid or the extent thereof, any payment which has been reimbursed to the body by any person or is charged to capital shall be disregarded, but the said Rule 21 shall have the like effect in relation to the whole of any such payment as it has effect, or would have effect, under this subsection in relation to such an excess as aforesaid.

In this subsection, the expression “ the appropriate rates ” means the rates which were applied in making deductions of income tax from the payments referred to in paragraph (b) of this subsection, the lowest rate being taken first and applied to an amount of the excess equal to the amount to which it was applied as aforesaid, and then so with the next lowest rate, and so on. [454]

(4) Any reference in this section or in the last foregoing section to the gross amount of any payment shall be construed as a reference to the amount of that payment before any deduction is made therefrom in respect of income tax. [455]

(5) This section shall, in relation to any body whose property, rights, liabilities and obligations vest by virtue of this Act in the North of Scotland Board, have effect with the substitution for the reference to the Central Authority of a reference to the North of Scotland Board. [456]

*Construed as one.*—Accordingly the present section is to be construed as if it were contained in the Income Tax Acts unless there is any manifest discrepancy showing that it has modified something to be found in the earlier Acts ; *Canada Southern Railway Co. v. International Bridge Co.* (1883), 8 App. Cas. 723, at p. 727 ; *Hart v. Hudson Brothers*, [1928] 2 K. B. 629, at p. 634 ; *Phillips v. Parnaby*, [1934] 2 K. B. 299, at p. 302.

Thus words defined in the earlier Acts will bear the like meaning in the present section, unless it is clear from the context that their construction in the present section is different.

The present section is the latest provision of a series of Acts dealing with the specific subject-matter of Income Tax, and any amendments effected by the present section should be construed consistently, if that be possible, with any scheme which can be seen in clear outline from the Acts (*Fendoch Investment Trust Co. v. I. R. C.*, [1945] 2 All E. R. 140, at p. 144, per Lord SIMONDS), but this principle can easily be pressed too far in relation to taxing enactments.

*Income Tax Acts.*—The principal Act in force is the Income Tax Act, 1918 (9 Halsbury's Statutes 426), but numerous amending Acts have been passed.

*Central Authority.*—The British Electricity Authority (s. 1 (3), *ante*). For the constitution of this body, see s. 3, *ante*.

*Composite company.*—See s. 17 (1), *ante*, and Sched. II, Part II, *post*.

*Rule 21 of the General Rules.*—*I.e.*, the General Rules applicable to Schedules A, B, C, D and E, contained in Schedule I to the Income Tax Act, 1918 (see 9 Halsbury's Statutes 587).

*Rule 21 shall have effect, etc.*—For an explanation of this provision, see H. of C. Official Report, S.C.E., April 24, 1947, cols. 753-756.

*Definitions.*—As to "stockholders' representative," see s. 21, *ante*. For definitions of "local authority," "securities" and "North of Scotland Board," see s. 67 (1), *post*.

**29. Re-opening of transactions resulting in dissipation of assets.**—(1) This section shall apply in any case where on or after the tenth day of January, nineteen hundred and forty-seven, any body to whom this Part of this Act applies, being a company, have—

- (a) made any payment to any person without consideration or for an inadequate consideration ;
- (b) sold or disposed of any of its property or rights without consideration or for an inadequate consideration ;
- (c) acquired any property or rights for an excessive consideration ;
- (d) entered into or varied any agreement so as to require an excessive consideration to be paid or given by the body ; or
- (e) entered into any other transaction of such an onerous nature as to cause a loss to or impose a liability on the body substantially exceeding any benefit accruing to the body ;

and the payment, sale, disposal, acquisition, agreement or variation thereof, or other transaction was not reasonably necessary for the purposes of the body or was made with an unreasonable lack of prudence on the part of the body :

Provided that this section shall not apply :

- (i) to any payment or other transaction to which section twenty-six of this Act applies ;
- (ii) to any payment or other transaction made or entered into for any charitable purpose ;
- (iii) to any payment or other transaction made or entered into in connection with the determination of any question, dispute or matter falling to be determined under any provision of this Part of this Act or any regulations made thereunder ; or
- (iv) to any payment or other transaction to which the previous consent of the Electricity Commissioners was given for the purposes of any enactment other than this section, or which has been approved in writing by the Minister, either generally or specially, and whether before or after the date of the payment or other transaction. [457]

(2) The Central Authority may, at any time before the expiration of a period of twelve months beginning with the vesting date, make an application to the arbitration tribunal in respect of any transaction to which in the opinion of the Authority this section applies, and all parties to the transaction, and all persons who were directors of the body at the date when the transaction was entered into shall, unless the tribunal otherwise directs, be made parties to the application. [458]

(3) Where the arbitration tribunal is satisfied that the transaction in respect of which an application is made is a transaction to which this section applies, then, unless it is shown by any of the parties to the application that the transaction was in the ordinary course of business and was in no way connected with any provision made by this Act or with any anticipation of the making of any such provision, the tribunal shall determine the extent of the net loss or liability caused to or imposed on the body by the transaction, and shall make such orders against all or any of the parties to the application (other than the Central Authority) as it thinks just, having regard to the extent to which they were respectively responsible for the transaction or benefited from it, for the payment by them to the Central Authority of sums

sufficient to enable the net loss or liability, or such part thereof as the tribunal thinks just, to be made good or met. [459]

(4) Where any Electricity Board have disclaimed an agreement or lease by a notice under this Part of this Act, being an agreement or lease entered into or varied on or after the said tenth day of January, nineteen hundred and forty-seven, the Central Authority may make an application to the arbitration tribunal under this section in respect of any loss or liability caused to or imposed on the body before the vesting date and, in the case of a lease, any loss or liability caused to or imposed on the Board between the vesting date and the disclaimer of the lease, in consequence of the onerous nature of the agreement or lease. [460]

(5) Where any application is made to the arbitration tribunal under this section in respect of any transaction, or a reference is made to that tribunal with respect to any notice given under this Part of this Act disclaiming an agreement or lease, the tribunal shall have exclusive jurisdiction—

(a) to determine claims arising in respect of the transaction or under the lease or agreement; and

(b) if the notice disclaiming any such agreement is confirmed by the tribunal, to determine any claims arising with respect to the agreement under the Law Reform (Frustrated Contracts) Act, 1943. [461]

(6) This section shall, in relation to any body whose property, rights, liabilities and obligations vest by virtue of this Act in the North of Scotland Board, have effect with the substitution for the references to the Central Authority of references to the North of Scotland Board. [462]

(7) In the case of a composite company, the company, and not the directors, shall be made parties to applications under this section. [463]

*General note.*—This section should be read in conjunction with s. 18, *ante*, providing for the disclaimer of agreements and leases. Note that, unlike s. 18, the present section has no application to transactions of local authorities.

*January 10, 1947.*—The date of publication of the Bill that led to the present Act.

*Not reasonably necessary, etc.*—For a criticism of this wording, see the speech of Lord Maugham, a former Lord Chancellor, at the Committee Stage of the Bill in the House of Lords on July 23, 1947 (151 H. of L. Official Report 203-205).

*Sub-s. (1), proviso.*—This proviso includes provision whereby, to avoid uncertainty, the Minister may be approached for approval of specific transactions. If approved, such transactions are no longer liable to challenge under this section.

*Central Authority.*—The British Electricity Authority (s. 1 (3), *ante*). For the constitution of this body, see s. 3, *ante*.

*Vesting date.*—Such date on or after April 1, 1948, not being less than six months after the establishment of the British Electricity Authority nor less than three months after the establishment of all the Area Boards and the definition by order of their areas, as the Minister of Fuel and Power may by order appoint. April 1, 1948, has been so appointed (ss. 14 (1), *ante*, and 67 (1), *post*, and see the notes thereto).

*Arbitration tribunal.*—The Electricity Arbitration Tribunal (s. 31 (1), *post*). For the general provisions applicable, see ss. 31-33, *post*. This tribunal is referred to in the present section as "the tribunal."

*Appeal to the Court of Appeal.*—An appeal lies to the Court of Appeal on any question of law or fact from any determination or order of the arbitration tribunal on an application under this section in respect of any transaction (s. 32 (3), *post*). Note also the provisions of the same section for stating special cases for determination by the Court of Appeal.

*Any Electricity Board.*—The term "Electricity Board" comprises any of the following: the British Electricity Authority, any of the Area Boards and the North of Scotland Board (s. 1 (3), *ante*).

*Law Reform (Frustrated Contracts) Act, 1943.*—36 Halsbury's Statutes 50. See s. 18 (5), *ante*, and notes thereto. S. 1 of that Act provides for the adjustment of the rights and liabilities of the parties to a frustrated contract.

*Definitions.*—As to "composite company," see s. 17 (1), *ante*, and Sched. II, Part II, *post*. For definitions of "company," "regulations," "enactment," "lien" and "North of Scotland Board," see s. 67 (1), *post*.

**30. Provisions as to foreign investments.**—(1) It shall not be lawful for any body to whom this Part of this Act applies other than a composite company to acquire any foreign investments. [464]

(2) Every such body shall, within such period as may be prescribed, supply to the Minister and the Central Authority particulars in the prescribed

form of all foreign investments of the body, and shall dispose of those investments in such manner and within such period as may be prescribed. [465]

(3) If any such body contravene or fail to comply with the provisions of this section or any regulation made thereunder, all persons who were directors of the body at the time when the contravention or failure occurred shall, subject to the next following subsection, be liable to make good any loss suffered by the Central Authority in consequence of the contravention or failure. [466]

(4) Any claim under this section by the Central Authority against the directors of any such body shall be made before the expiration of a period of twelve months beginning with the vesting date and shall be determined by arbitration under this Act, and all persons who were directors of the body at the time when the alleged contravention or failure occurred shall, unless the arbitration tribunal otherwise directs, be made parties to the proceedings, and, if the arbitration tribunal decides the claim in favour of the Central Authority, it shall make such orders against all or any of the said directors in respect of their liability under this section as it thinks just, having regard to all the circumstances. [467]

(5) In this section the expression "foreign investments" means any assets the transfer of which is governed otherwise than by the law of any part of Great Britain. [468]

(6) If it appears to the Minister to be necessary or expedient, for the purpose of securing the disposal of foreign investments of any body under this section, to postpone the vesting date in relation to that body, he may direct that the vesting date for the purposes of this Act shall, in relation to that body, be such date, later than the date which would otherwise be appointed or fixed, as may be specified in the direction. [469]

(7) This section shall, in relation to any body whose property, rights, liabilities and obligations vest by virtue of this Act in the North of Scotland Board, have effect with the substitution for the references to the Minister and the Central Authority of references to the Secretary of State and the North of Scotland Board respectively. [470]

*Application of section.*—Though composite companies are excluded from the operation of this section, local authorities are not specifically referred to. However, they would not normally be empowered to invest in foreign securities in the first place and the terminology of the later subsections as to "directors," etc., is clearly inapplicable to local authorities.

*Composite company.*—See s. 17 (1), *ante*, and Sched. II, Part II, *post*.

*The Minister.*—The Minister of Fuel and Power (s. 87 (1), *post*).

*Central Authority.*—The British Electricity Authority (s. 1 (3), *ante*). For the constitution of this body, see s. 3, *ante*.

*Regulations.*—On September 24, 1947, the Minister of Fuel and Power, under the present section and s. 35, *post*, made the Electricity (Foreign Investments) Regulations, 1947, S. R. & O., 1947, No. 2077.

For the general provisions applicable to regulations under the Act, see s. 64, *post*. Any such regulations are to be laid before Parliament under s. 64 (3), *post*; but see note thereto. As to offences against regulations, see s. 61 (2), *post*.

*Vesting date.*—Such date on or after April 1, 1948, not being less than six months after the establishment of the British Electricity Authority nor less than three months after the establishment of all the Area Boards and the definition by order of their areas, as the Minister of Fuel and Power may by order appoint. April 1, 1948, has been so appointed (ss. 14 (1), *ante*, and 87 (1), *post*, and see the notes thereto).

Note the power under sub-s. (6) of the present section to postpone the vesting date in relation to particular bodies.

*Determined by arbitration.*—Arbitrations under this section will be heard and determined by the Electricity Arbitration Tribunal under the provisions of ss. 31-33, *post*.

*Arbitration tribunal.*—The Electricity Arbitration Tribunal (s. 31 (1), *infra*).

*Definitions.*—For definitions of "prescribed," "regulations" and "North of Scotland Board," see s. 87 (1), *post*.

### *Supplementary Provisions*

**31. Establishment of Electricity Arbitration Tribunal.**—(1) For the purpose of determining any question or dispute which under any provision of this Part of this Act or any regulations made thereunder is to be determined by

arbitration under this Act, or any matter in respect of which jurisdiction is given to the arbitration tribunal under this Part of this Act, there shall be established a tribunal called the Electricity Arbitration Tribunal (in this Act referred to as "the arbitration tribunal") and the arbitration tribunal shall subject to the provisions of this section, hear and determine every such question, dispute or matter as aforesaid. [471]

(2) The arbitration tribunal shall, as the Lord Chancellor may direct, either sit as a single tribunal or sit in two or more divisions, and shall, for the hearing of any proceedings, be constituted as follows:—

- (a) one member shall be a person of legal experience and he shall be the president of the tribunal;
- (b) there shall be two other members of whom one shall be a person of experience in business and the other shall be a person of experience in finance:

Provided that, in relation to any proceedings which, under the provisions of subsection (5) of this section, are required to be held in Scotland, the member who is a person of legal experience shall be a person of legal experience in Scotland. [472]

(3) The members of the tribunal shall be appointed by the Lord Chancellor, except that any member or members appointed as being a person or persons of legal experience in Scotland shall be appointed by the Lord President of the Court of Session, and any member appointed by the Lord President shall only act in relation to proceedings which are required as aforesaid to be held in Scotland. [473]

(4) The members of the arbitration tribunal shall hold office for such period as may be determined at the time of their respective appointments and shall be eligible for reappointment:

Provided that—

- (a) a member may at any time by not less than one month's notice in writing to the Lord Chancellor, or the Lord President of the Court of Session, as the case may be, resign his office;
- (b) the Lord Chancellor, or the Lord President of the Court of Session, as the case may be, may declare the office of any member vacant on the ground that he is unfit to continue in his office;
- (c) if any member becomes bankrupt or makes a composition with his creditors, his office shall thereupon become vacant. [474]

(5) Where any such question, dispute or matter as aforesaid arises out of or in connection with the vesting by virtue of this Act of the property, rights, liabilities and obligations of any body, or in connection with any transaction of any body, and the principal place of business of the body is in Scotland, the tribunal shall sit in Scotland. [475]

(6) If any member of the arbitration tribunal becomes, by reason of illness or other infirmity, temporarily incapable of performing the duties of his office, the Lord Chancellor, or the Lord President of the Court of Session, as the case may be, shall appoint some other fit person to discharge his duties for any period not exceeding six months at one time, and the person so appointed shall, during that period, have the same powers as the person in whose place he was appointed. [476]

(7) The arbitration tribunal may, at any stage in any proceedings before them, refer to a person or persons appointed by them for the purpose, any question arising in the proceedings, for inquiry and report, and the report of any such person or persons may be adopted wholly or partly by the tribunal and, if so adopted, may be incorporated in an order of the tribunal. [477]

*Object of section.*—This section provides for the establishment of a new tribunal, to be called the Electricity Arbitration Tribunal, to determine any question which under Part II of the Act or regulations thereunder is to be "determined by arbitration under this Act" and other matters in respect of which the tribunal is specially given jurisdiction under the said Part II.

*Regulations.*—*I.e.*, regulations made by the Minister of Fuel and Power (s. 67 (1), *post*).  
*Notice in writing.*—For the general provisions as to notices, see s. 63, *post*.  
*Sub-s. (7).*—See note to s. 33 (3), *post*.

**32. Procedure and enforcement of orders of arbitration tribunal.**—(1) The arbitration tribunal shall be a court of record and have an official seal, which shall be judicially noticed, and any order of the tribunal shall be enforceable in England and Wales as if it were an order of the High Court. [478]

(2) The provisions of the Arbitration Acts, 1889 to 1934, with respect to—

- (a) the administration of oaths and the taking of affirmations ; and
- (b) the correction in awards of mistakes and errors ; and
- (c) the summoning, attendance and examination of witnesses and the production of documents ; and
- (d) the costs of the reference and award,

shall, with any necessary modifications, apply in respect of any proceedings before the arbitration tribunal, but, save as aforesaid, the said Acts shall not apply to any such proceedings. [479]

(3) The arbitration tribunal may, and if so ordered by the Court of Appeal shall, state in the form of a special case for determination by the Court of Appeal any question of law which may arise before them, and an appeal shall lie to the Court of Appeal on any question of law or fact from any determination or order of the arbitration tribunal on a claim under section twenty-six of this Act against the directors of a body to whom Part II of this Act applies or on an application under section twenty-nine of this Act in respect of any transaction. [480]

(4) The Minister shall have a right to be heard in all proceedings before the arbitration tribunal and proceedings on a case stated by or an appeal from that tribunal. [481]

(5) Subject to the provisions of this section, the procedure in or in connection with any proceedings before the arbitration tribunal shall be such as may be determined by rules to be made by the tribunal with the approval of the Lord Chancellor. [482]

(6) In relation to proceedings which, under the last foregoing section, are required to be held in Scotland, this section shall have effect subject to the following modifications—

- (a) for subsections (2) and (3) there shall be substituted the following subsections—

“(2) The arbitration tribunal shall have the like powers for securing the attendance of witnesses and the production of documents, and with regard to the examination of witnesses on oath and the awarding of expenses as if the arbitration tribunal were an arbiter under a submission.

(3) The arbitration tribunal may, and if so directed by the Court of Session shall, state a case for the opinion of that Court on any question of law arising in the proceedings, and an appeal shall lie to the Court of Session on any question of law or fact from any determination or order of the arbitration tribunal on a claim under section twenty-six of this Act against the directors of a body to whom Part II of this Act applies or on an application under section twenty-nine of this Act in respect of any transaction.

An appeal shall lie, with the leave of the Court of Session or of the House of Lords, from any decision of the Court of Session under this subsection, and such leave may be given on such terms as to costs or otherwise as the Court of Session or the House of Lords may determine ; ”

- (b) in subsection (6) for the reference to the Lord Chancellor there shall be substituted a reference to the Secretary of State. [483]



(7) The Secretary of State shall have a right to be heard in all proceedings before the arbitration tribunal and proceedings on a case stated by or an appeal from that tribunal, being proceedings to which the North of Scotland Board is a party. [484]

*Arbitration tribunal.*—The Electricity Arbitration Tribunal (s. 31 (1), *ante*).

*Court of record.*—The characteristic of a court of record is the power to fine or imprison, whether for contempt of itself or for other substantive offences. Compare the status of county courts under the County Courts Act, 1934, s. 1 (2) (27 Halsbury's Statutes 92) ("court of record and shall have a seal"); and that of the Railway and Canal Commission under the Railway and Canal Traffic Act, 1888, s. 2 (14 Halsbury's Statutes 220) and the Railway Rates Tribunal under the Railways Act, 1921, s. 20 (1) (14 Halsbury's Statutes 332) ("court of record, and have an official seal which shall be judicially noticed").

*Judicial notice.*—It is unnecessary on the trial of an action to give formal evidence of matters of which judicial notice is taken.

*As if it were an order of the High Court.*—That is to say, the Electricity Arbitration Tribunal, in its particular sphere, is given jurisdiction at High Court level.

*Arbitration Acts, 1889 to 1934.*—The Arbitration Act, 1889 (1 Halsbury's Statutes 453); the Arbitration Clauses (Protocol) Act, 1924 (1 Halsbury's Statutes 469); the Arbitration (Foreign Awards) Act, 1930 (23 Halsbury's Statutes 4); and the Arbitration Act, 1934 (27 Halsbury's Statutes 27).

*Special case for determination.*—Compare the power of an arbitrator in arbitrations outside the present Act, if any question of law arises in the course of a reference, before making his award to state such question in the form of a special case for the opinion of the Court (Arbitration Act, 1889, s. 19; 1 Halsbury's Statutes 462). For the ordinary law as to references by an arbitrator under an order of the High Court, see the Supreme Court of Judicature (Consolidation) Act, 1925, s. 94 (13 Halsbury's Statutes 233).

*The Minister.*—The Minister of Fuel and Power (s. 67 (1), *post*).

**33. Staff and expenses of arbitration tribunal.**—(1) The arbitration tribunal may, subject to the consent of the Treasury as to numbers, appoint such officers as they consider necessary for assisting them in the proper execution of their duties. [485]

(2) There shall be paid to the members of the arbitration tribunal and to any such officer as aforesaid such remuneration (whether by way of salaries or fees) and such allowances as the Minister may, with the approval of the Treasury, determine. [486]

(3) There shall be paid to any person to whom proceedings are referred by the arbitration tribunal under the last but one foregoing section for hearing and determination such remuneration (whether by way of salaries or fees) and such allowances as the tribunal may, with the approval of the Treasury, determine. [487]

(4) Any such remuneration and allowances as aforesaid and any other expenses of the arbitration tribunal shall be defrayed in the first instance by the Minister out of moneys provided by Parliament, but the amounts from time to time so paid by the Minister shall be repaid on demand to the Minister by the Central Authority :

Provided that such proportion of the amounts so paid by the Minister in respect of proceedings to which the North of Scotland Board is a party as the Minister and the Secretary of State may determine shall be repaid to the Minister by the North of Scotland Board. [488]

*Arbitration tribunal.*—The Electricity Arbitration Tribunal (s. 31 (1), *ante*).

*The Minister.*—The Minister of Fuel and Power (s. 67 (1), *post*).

*Sub-s. (3).*—The Bill as originally drafted included in the equivalent of s. 31, *ante*, a sub-clause empowering the Electricity Arbitration Tribunal to "refer the proceeding for hearing and determination to a person or persons appointed by them for the purpose," but in Standing Committee of the House of Commons objection was taken to this power of delegation and the Solicitor-General agreed to reconsider the matter (see H. of C. Official Report, S.C.E., May 1, 1947, cols. 842-845). At the Committee Stage in the House of Lords on July 23, 1947, the Lord Chancellor moved two Amendments altering the sub-clause to its present form (151 H. of L. Official Report 233-234) and these were agreed without discussion. Nevertheless the consequential provision of the present subsection remained unamended and, as there would appear to be no persons in relation to whom it could operate, it becomes a surplusage.

*Central Authority.*—The British Electricity Authority (s. 1 (3), *ante*). For the constitution of this body, see s. 3, *ante*.

*Definitions.*—For definitions of "officers" and "North of Scotland Board," see s. 67 (1), *post*.



### 34. Determination of questions as to application of Part II of this Act.—

(1) The Minister shall, within the prescribed period, serve a notice on every body who in his opinion are a power station company or electricity holding company to whom this Part of this Act applies and, unless that body serves on the Minister, within such period (not being less than twenty-eight days) after the service of the notice as may be prescribed, a counter notice in the prescribed form (which is not withdrawn) stating that in their opinion this Part of this Act does not apply to them, this Part of this Act shall be deemed to apply to the body. [489]

(2) Where any body on whom the Minister has not served a notice under the last foregoing subsection within the period prescribed therefor, are of opinion that they are a power station company or electricity holding company to whom this Part of this Act applies, they may within such further period (not being less than twenty-eight days) as may be prescribed after the expiration of the period aforesaid, serve a notice on the Minister in the prescribed form, and unless the Minister serves on that body, within such period as may be prescribed, a counter notice in the prescribed form (which is not withdrawn) stating that in his opinion this Part of this Act does not apply to them, this Part of this Act shall be deemed to apply to the body. [490]

(3) Where, in the case of any body, other than authorised undertakers, no notice has been served by the Minister or the body under the foregoing provisions of this section within the periods prescribed therefor, this Part of this Act shall be deemed not to apply to the body. [491]

(4) Where a counter notice is served under the foregoing provisions of this section and is not withdrawn, the question whether this Part of this Act applies to the body by or on whom the counter notice was served shall be determined by arbitration under this Act. [492]

(5) Where a question has been referred to arbitration in accordance with the last foregoing subsection and the arbitration tribunal determine that this Part of this Act applies to the body, the tribunal may and, if the vesting date has already occurred, shall, fix a later date which, in relation to that body shall be, and be deemed always to have been, the vesting date for the purposes of this Act. [493]

*The Minister.*—The Minister of Fuel and Power (s. 67 (1), *post*).

*Prescribed.*—*I.e.*, prescribed by regulations made by the Minister (s. 67 (1), *post*). On September 24, 1947, the Minister of Fuel and Power, under the present section and s. 35, *infra*, made the Electricity (Power Station and Electricity Holding Companies) Regulations, 1947, S. R. & O., 1947, No. 2078.

*Determined by arbitration.*—Arbitrations under this section will be heard and determined by the Electricity Arbitration Tribunal under the provisions of ss. 31–33, *ante*.

*Arbitration tribunal.*—The Electricity Arbitration Tribunal (s. 31 (1), *ante*).

*Vesting date.*—Such date on or after April 1, 1948, not being less than six months after the establishment of the British Electricity Authority nor less than three months after the establishment of all the Area Boards and the definition by order of their areas, as the Minister of Fuel and Power may by order appoint. April 1, 1948, has been so appointed (ss. 14 (1), *ante*, and 67 (1), *post*, and see the notes thereto).

Note the provision for the postponement of the vesting date in the special cases to which sub-s. (5) of the present section applies.

*Definitions.*—As to “power station company” and “electricity holding company,” see s. 13 (1), *ante*, and as to “authorised undertakers,” see s. 13 (1), *ante*, and Sched. II, *post*.

**35. Power to obtain information.**—(1) Regulations may require any body who is or may be a body to whom this Part of this Act applies to produce such books of account, records and documents, to supply copies of and extracts from such books, records and documents, and to furnish such other information as may reasonably be required—

- (a) by the Minister or the Secretary of State for the purpose of ascertaining whether or not the body is one to whom this Part of this Act applies ;
- (b) by any Electricity Board for the purpose of facilitating the taking over of the business of the body by them on the vesting date ; or
- (c) by the Minister, the Secretary of State or any Electricity Board for other purposes arising out of the provisions of this Part of this Act ;

and to provide facilities for the examination of any such books, records and documents, and the taking of copies thereof and extracts therefrom, and facilities for the verification of other information furnished under the regulations; and such regulations may make provision as to the manner, time and place in or at which any requirement under the regulations is to be complied with. [494]

(2) Regulations made under this section shall make provision for the payment to any such body of expenses reasonably incurred by them in complying with any requirements made by or under the regulations. [495]

*Regulations.*—On September 24, 1947, the Minister of Fuel and Power made (a) under s. 30, *ante*, and this section, the Electricity (Foreign Investments) Regulations, 1947, S. R. & O., 1947, No. 2077; (b) under s. 34, *ante*, and this section, the Electricity (Power Station and Electricity Holding Companies) Regulations, 1947, S. R. & O., 1947, No. 2078; and (c) under this section and s. 48, *post*, the Electricity (Information) Regulations, 1947, S. R. & O., 1947, No. 2079, *post*.

For the general provisions applicable to regulations under the Act, see s. 64, *post*. Any such regulations are to be laid before Parliament under s. 64 (3), *post*; but see note thereto. As to offences against regulations, see s. 61 (2), *post*.

*Any Electricity Board.*—The term "Electricity Board" comprises any of the following: the British Electricity Authority, any of the Area Boards and the North of Scotland Board (s. 1 (3), *ante*).

*Vesting date.*—Such date on or after April 1, 1948, not being less than six months after the establishment of the British Electricity Authority nor less than three months after the establishment of all the Area Boards and the definition by order of their areas, as the Minister of Fuel and Power may by order appoint. April 1, 1948, has been so appointed (ss. 14 (1), *ante*, and 67 (1), *post*, and see the notes thereto).

## PART III

### FINANCIAL PROVISIONS

**36. General duties and powers of Central Authority and Area Boards in financial matters.**—(1) It shall be the duty of the Central Authority so to exercise and perform their functions under this Act, including their functions in relation to Area Boards, as to secure that the combined revenues of the Central Authority and all the Area Boards taken together are not less than sufficient to meet their combined outgoings properly chargeable to revenue account taking one year with another. [496]

(2) Without prejudice to the powers of the Central Authority under Part I of this Act to exercise, by means of directions given to Area Boards, a general control over the policy of those Boards in financial as in other matters, such directions may require Area Boards—

- (a) to submit for the approval of the Central Authority periodic estimates of revenue and expenditure;
- (b) to obtain the approval of the Central Authority of programmes of development involving capital expenditure, and of expenditure otherwise properly chargeable to capital account and in other classes of cases where it is desirable in the opinion of the Central Authority to secure co-ordination between different Area Boards in matters involving expenditure. [497]

*Effect of section.*—This section charges the Central Authority (but not the Area Boards) with the duty of seeing that the total revenues of the Central Authority and the Area Boards "taking one year with another" are sufficient to cover expenses, *i.e.*, of seeing that the nationalised industry is not run at a loss. Sub-s. (2) is designed to assist the Central Authority in the discharge of this duty.

*Central Authority.*—The British Electricity Authority (s. 1 (3), *ante*). For the constitution of this body, see s. 3, *ante*.

*Area Boards.*—See s. 1 (3), *ante*.

*General control by directions.*—See s. 6, *ante*.

*Definition.*—For definition of "functions," see s. 67 (1), *post*.

**37. Fixing and variation of tariffs.**—(1) The prices to be charged by the Central Authority for the supply of electricity by them to Area Boards shall be in accordance with such tariffs as may be fixed by the Authority from time to time, and different tariffs may be fixed for different Area Boards. [498]

(2) The tariffs fixed under the last foregoing subsection shall be so framed as to show the methods by which and the principles on which the charges are to be made as well as the prices which are to be charged, and shall be published in such manner as in the opinion of the Central Authority will secure adequate publicity for them. [499]

(3) Subject to any directions of the Central Authority and to the provisions of this Act with respect to railways, the prices to be charged by Area Boards for the supply of electricity by them shall be in accordance with such tariffs as may be fixed from time to time by them, and those tariffs shall be so framed as to show the methods by which and the principles on which the charges are to be made as well as the prices which are to be charged, and shall be published in such manner as in the opinion of the Area Board will secure adequate publicity for them :

Provided that—

(a) the tariffs in force immediately before the vesting date in the area of supply or any part of the area of supply of any authorised undertakers shall remain in force, until varied or replaced by tariffs fixed in accordance with this section, and apply to the supply of electricity by the Area Board within whose area the said area of supply or part thereof is comprised ; and

(b) nothing in this subsection shall affect any agreement in force immediately before the vesting date. [500]

(4) A tariff fixed by an Area Board under the last foregoing subsection may include a rent or other charge in respect of electrical fittings provided by the Board on the premises of the consumer. [501]

(5) The Central Authority may give directions to any Area Board requiring them, in such classes of cases as may be specified in the directions, to obtain the approval in writing of the Central Authority before exercising their powers under the foregoing provisions of this section. [502]

(6) The Central Authority may, if they consider that the tariffs in force in the area or any part of the area of an Area Board ought to be varied or replaced by new tariffs, direct the Area Board to submit proposals for varying or replacing those tariffs, and may approve the proposals so submitted either without modifications or with such modifications as, after consultation with the Area Board, they think fit to make ; and it shall be the duty of the Area Board to give effect to any proposals approved under this subsection. [503]

(7) Notwithstanding anything in the foregoing provisions of this section, an Area Board may enter into an agreement with any consumer for the supply of electricity to him on such terms as may be specified in the agreement :

Provided that an Area Board, in exercising their powers under this subsection, shall—

(a) secure that such agreements are only made in cases where the tariffs in force are not appropriate owing to special circumstances ; and

(b) comply with any directions given by the Central Authority, whether of a general or specific character. [504]

(8) An Area Board, in fixing tariffs and making agreements under this section, shall not show undue preference to any person or class of persons and shall not exercise any undue discrimination against any person or class of persons, and the Central Authority shall, in exercising their powers under this section in relation to the fixing of tariffs and making of agreements by Area Boards, secure compliance by Area Boards with this subsection. [505]

*General note.*—Sub-ss. (1) and (2) of this section relate to the prices to be charged by the Central Authority for supplies to the Area Boards : these are to be fixed by the Central Authority. Sub-ss. (3) and (4) correspondingly relate to the prices to be charged by the

Area Boards for supplies to consumers: these are to be fixed by the Area Boards. The remaining four subsections provide for various incidental matters.

*Central Authority.*—The British Electricity Authority (s. 1 (3), *ante*). For the constitution of this body, see s. 3, *ante*.

*Directions of the Central Authority.*—E.g., under s. 6, *ante*.

*Provisions with respect to railways.*—See s. 49, *post*.

*Vesting date.*—Such date on or after April 1, 1948, not being less than six months after the establishment of the British Electricity Authority nor less than three months after the establishment of all the Area Boards and the definition by order of their areas, as the Minister of Fuel and Power may by order appoint. April 1, 1948, has been so appointed (ss. 14 (1), *ante*, and 67 (1), *post*, and see the notes thereto).

*Undue preference and undue discrimination.*—The Electric Lighting Act, 1882, s. 19 (7 Halsbury's Statutes 695), was designed to ensure that one consumer was not overcharged as against other consumers, and s. 20 of the same Act provided that undue preference should not be shown. Though each of these sections is repealed by Sched. V, *post*, the protection they afforded is substantially continued by sub-s. (8), *ante*. As to what is "undue preference," see *Metropolitan Electric Supply Co. v. Ginder*, [1901] 2 Ch. 799. It was held in *A.-G. for Victoria v. Melbourne Corpn.*, [1907] A. C. 469, that "preference" is a preference between consumers dealing under similar circumstances, and not between consumers dealing under two different systems of charge.

*Definitions.*—As to "authorised undertakers," see s. 67 (1) and Sched. II, *post*. For definition of "electrical fittings," see s. 67 (1), *post*.

### 38. Investigation into and modification of provisions of Act of 1943 regarding price of electricity supplied under s. 16 (1). [506]

*General note.*—This section concerns the Hydro-Electric Development (Scotland) Act, 1943 (6 & 7 Geo. 6, c. 32), and has practical application only to Scotland.

**39. Borrowing powers of Central Authority and Area Boards.**—(1) The Central Authority and any Area Board may, with the consent of the Minister and with the approval of the Treasury or in accordance with the terms of any general authority issued by the Minister with the approval of the Treasury, borrow temporarily, by way of overdraft or otherwise, such sums as the borrowing Authority or Board may require for meeting their obligations or discharging their functions under this Act. [507]

(2) The Central Authority may, with the consent of the Minister and the approval of the Treasury, borrow money by the issue of British Electricity Stock, for all or any of the following purposes, that is to say—

- (a) the redemption of any British Electricity Stock;
- (b) the provision of money for meeting any expenditure incurred by the Central Authority or any Area Board in connection with any works the cost of which is properly chargeable to capital account;
- (c) the provision of any working capital required by the Central Authority or any Area Board;
- (d) the provision of money required for the payment of compensation to any local authority, in respect of severance or, in pursuance of a direction of the Minister under Part II of this Act, in respect of expenditure on capital works;
- (e) any other purpose for which capital moneys are properly applicable by the Central Authority or any Area Board, including the repayment of any money temporarily borrowed under the last foregoing subsection for any of the purposes mentioned in this subsection; and
- (f) any other payment which the Central Authority or any Area Board are authorised to make and which ought in the opinion of the Central Authority to be spread over a term of years. [508]

(3) The aggregate of the amounts outstanding in respect of the principal of any stock issued by the Central Authority, otherwise than for the purpose of paying compensation under Part II of this Act whether in stock or cash, and in respect of any temporary loans raised by the Central Authority or any Area Board shall not at any time exceed the sum of seven hundred million pounds:

Provided that nothing in this subsection shall prevent the Central Authority from borrowing in excess of the said sum for the purpose of redeeming

any British Electricity Stock which they are required or entitled to redeem, or of repaying any money temporarily borrowed under subsection (1) of this section. [509]

(4) Save as aforesaid, neither the Central Authority nor any Area Board shall borrow any money. [510]

*Temporary borrowing.*—In the case of the Transport Act, 1947, s. 88 (1) (see title ROAD TRAFFIC, *post*), a "ceiling" of £25,000,000 is laid down for temporary borrowing, while the Coal Industry Nationalisation Act, 1946, s. 27 (39 Halsbury's Statutes 283) and the Cotton (Centralised Buying) Act, 1947 (10 & 11 Geo. 6, c. 26), s. 16, each lay down a limit of £10,000,000. In the present Act, however, no limit is fixed, chiefly in the interests of flexibility, beyond the overall "ceiling" for stock (other than stock issued to pay compensation) and temporary loans of £700,000,000 provided for by sub-s. (3), *ante*, subject to the proviso to that subsection.

*Central Authority.*—The British Electricity Authority (s. 1 (3), *ante*). For the constitution of this body, see s. 3, *ante*.

*Any Area Board.*—See s. 1 (3), *ante*.

*The Minister.*—The Minister of Fuel and Power (s. 67 (1), *post*).

*Direction . . . under Part II.*—See s. 24, *ante*.

*Definitions.*—As to "British Electricity Stock," see s. 40, *infra*. For definitions of "functions" and "local authority," see s. 67 (1), *post*.

#### 40. British Electricity Stock.—(1) The Central Authority—

- (a) may create and issue any stock required for the purpose of exercising their powers under the last foregoing section ;
- (b) shall create and issue such stock as is required for the purpose of satisfying any right to compensation which, under any provision of this Act, is expressly required to be satisfied by the issue of stock ;

and the stock so created and issued is in this Act referred to as "British Electricity Stock." [511]

(2) Subject to the provisions of this section, and of the Third Schedule to this Act, British Electricity Stock shall be issued, transferred, dealt with and redeemed upon such terms and in accordance with such provisions as may be prescribed by regulations made by the Minister, with the approval of the Treasury, and any such regulations may, in relation to any such stock, apply with or without modifications any provisions of the Local Loans Act, 1875, or of any enactments relating to stock issued by a local authority. [512]

(3) Any British Electricity Stock in which no person other than the Central Authority has any beneficial interest shall be cancelled. [513]

(4) Where any British Electricity Stock has through inadvertence been issued in respect of securities the whole of the beneficial interest in which was vested immediately before the vesting date in a body to whom Part II of this Act applies, not being a local authority, the stock shall be deemed to be held on behalf of the Central Authority. [514]

*Central Authority.*—The British Electricity Authority (s. 1 (3), *ante*). For the constitution of this body, see s. 3, *ante*.

*Compensation to be satisfied by the issue of stock.*—See, in particular, ss. 20 and 25, *ante*.

*Regulations.*—Up to the time of going to press, no regulations had been made under this section.

For the general provisions applicable to regulations under the Act, see s. 64, *post*. Any regulations under this section are to be laid before Parliament under s. 64 (3), *post* ; but see note thereto. As to offences against regulations, see s. 61 (2), *post*.

*Local Loans Act, 1875.*—12 Halsbury's Statutes 242. The provisions of this Act could be applied with or without modification, by regulations of the Minister of Transport, to stock created under the Electricity (Supply) Act, 1926, s. 28 (7 Halsbury's Statutes 810).

*Vesting date.*—Such date on or after April 1, 1948, not being less than six months after the establishment of the British Electricity Authority nor less than three months after the establishment of all the Area Boards and the definition by order of their areas, as the Minister of Fuel and Power may by order appoint. April 1, 1948, has been so appointed (ss. 14 (1), *ante*, and 67 (1), *post*, and see the notes thereto).

*Definitions.*—For definitions of "prescribed," "enactment," "local authority" and "securities," see s. 67 (1), *post*.

41. Apportionment of liabilities in respect of stock, borrowed moneys, etc., as between Central Authority and Area Boards.—(1) The Central Authority may require any Area Board to contribute, to such extent as may be deter-

mined by the Central Authority, towards the satisfaction of the obligations of the Central Authority in respect of—

- (a) the redemption of British Electricity Stock or the payment of interest thereon ;
- (b) the repayment of sums to the Treasury under the next following section or the payment of interest thereon ;
- (c) the making of payments under Part II of this Act by way of compensation to local authorities ; or
- (d) the repayment of any sums temporarily borrowed by the Central Authority or the payment of interest thereon ;

and the Area Board shall comply with that requirement. [515]

(2) The Central Authority, in exercising their powers under this section, shall act on general principles settled from time to time with the approval of the Minister. [516]

*Effect of section.*—Though the Central Authority is solely responsible for certain payments under the Act, it may call upon the Area Boards for contributions. Though the extent of any such calls is to be determined by the Central Authority, it must act on settled principles approved by the Minister.

*Central Authority.*—The British Electricity Authority (s. 1 (3), *ante*). For the constitution of this body, see s. 3, *ante*.

*Any Area Board.*—See s. 1 (3), *ante*.

*British Electricity Stock.*—As to the creation and issue of this stock, see s. 40 (1), *ante*.

*Redemption of British Electricity Stock.*—See s. 40 (2), *ante*.

*Compensation to local authorities.*—See ss. 22, 23 and 24, *ante*.

*Sums temporarily borrowed.*—See s. 39 (1), *ante*.

*The Minister.*—The Minister of Fuel and Power (s. 67 (1), *post*).

**42. Treasury guarantees.**—(1) The principal of and the interest on any British Electricity Stock created and issued for the purpose of satisfying any right to compensation which, under any provision of this Act, is expressly required to be satisfied by the issue of stock, shall be guaranteed by the Treasury, and the Treasury may guarantee, in such manner and on such conditions as they think fit, the redemption or repayment of, and the payment of any interest on, any other British Electricity Stock or any temporary loan raised by the Central Authority or any Area Board. [517]

(2) Any sums required by the Treasury for fulfilling any such guarantee as is provided for by the last foregoing subsection shall be charged on and issued out of the Consolidated Fund of the United Kingdom or the growing produce thereof (hereinafter referred to as “the Consolidated Fund”), and any such sums shall be repaid together with interest thereon at such rate as the Treasury may determine by the Central Authority to the Treasury in such manner and over such period as the Treasury may, after consultation with the Minister, determine. [518]

(3) Immediately after a guarantee is given under this section, the Treasury shall lay a statement of the guarantee before each House of Parliament. [519]

(4) Where any sum is issued out of the Consolidated Fund under this section, the Treasury shall forthwith lay before each House of Parliament a statement that that sum has been issued. [520]

*Effect of section.*—British Electricity Stock issued for satisfying compensation is to be guaranteed by the Treasury, but, in contradistinction to this duty, the Treasury is merely empowered to guarantee other British Electricity Stock and temporary loans raised by the Central Authority or an Area Board. Parliament is to be informed immediately a guarantee is given. If the Treasury is, in any case, called upon to fulfil its guarantee, moneys are to be provided out of the Consolidated Fund and if any moneys are so provided, Parliament is to be informed.

*British Electricity Stock.*—As to the creation and issue of this stock, see s. 40 (1), *ante*.

*Compensation to be satisfied by the issue of stock.*—See, in particular, ss. 20 and 25, *ante*.

*Any temporary loan.*—For the power of temporary borrowing, see s. 39 (1), *ante*.

*Central Authority.*—The British Electricity Authority (s. 1 (3), *ante*). For the constitution of this body, see s. 3, *ante*.

*Any Area Board.*—See s. 1 (3), *ante*.

*The Minister.*—The Minister of Fuel and Power (s. 67 (1), *post*).



**43. Reserve Funds of Central Authority and Area Boards.**—(1) The Central Authority shall establish and maintain a general reserve fund, which shall be known as the central reserve fund. [521]

(2) The Central Authority and the Area Boards shall contribute to the central reserve fund such sums at such times as the Central Authority may determine and the management of the said fund and the application of the moneys comprised therein shall be as the Central Authority may determine :  
Provided that—

- (a) no part of the said fund shall be applied otherwise than for the purposes of the Central Authority and Area Boards ; and
- (b) the power of the Minister to give directions to the Central Authority shall extend to the giving to them, with the approval of the Treasury, of directions as to any matter relating to the establishment or management of the said fund, the carrying of sums to the credit thereof, or the application thereof, notwithstanding that the directions may be of a specific character. [522]

(3) Any Area Board may establish a general reserve fund for the purposes of the Area Board, which shall be known as an area reserve fund. [523]

(4) If an Area Board establish an area reserve fund, they shall, from their surplus revenue, contribute to the said fund, to such extent as the Central Authority may approve, and the management of the said fund and the application of the moneys comprised therein shall be as the Area Board may determine :

Provided that—

- (a) no part of the fund shall be applied otherwise than for the purposes of the Area Board ; and
- (b) the power of the Central Authority to give directions to any Area Board shall extend to the giving to them, with the approval of the Minister, of directions as to any matter relating to the establishment or management of the area reserve fund or the carrying of sums to the credit thereof, notwithstanding that the directions may be of a specific character. [524]

(5) The foregoing provisions of this section shall be without prejudice to the power of the Central Authority or any Area Board to establish appropriate reserves for replacements or other purposes :

Provided that an Area Board shall act in regard to the establishment, management and application of any such reserve in accordance with any directions of the Central Authority, whether of a general or specific character. [525]

(6) It is hereby declared that one of the purposes of the central reserve fund and the area reserve funds is the prevention of frequent fluctuations in the charges made by the Central Authority and the Area Boards, and the powers of that Authority and those Boards in relation of those funds shall be exercised accordingly. [526]

*Establishing a reserve fund.*—Under sub-s. (1) of this section the Central Authority is required to establish a general reserve fund, but Area Boards, though empowered to establish such funds, are not obliged to do so (sub-s. (3)). Note that the Area Boards are to contribute to the central reserve fund amounts to be fixed by the Central Authority, the purpose of the provisions as a whole being to stabilise prices by avoiding frequent fluctuations of tariff.

*Central Authority.*—The British Electricity Authority (s. 1 (3), *ante*). For the constitution of this body, see s. 3, *ante*.

*Area Boards.*—See s. 1 (3), *ante*.

*The Minister.*—The Minister of Fuel and Power (s. 67 (1), *post*).

**44. Application of surplus revenues of Central Authority and Area Boards.**

—(1) Any excess of the Central Authority's revenues for any financial year over their outgoings for that year properly chargeable to revenue account shall be applied for such purposes as the Authority may determine :



Provided that—

- (a) no part of any such excess shall be applied otherwise than for the purposes of the Authority or any Area Board ; and
- (b) the power of the Minister to give directions to the Authority shall extend to the giving to them, with the approval of the Treasury, of directions as to the application of any such excess, notwithstanding that the directions may be of a specific character.

[527]

(2) Any excess of any Area Board's revenues for any financial year over their outgoings for that year properly chargeable to revenue account shall be applied for such purposes of the Area Board as the Board may, with the approval of the Central Authority, determine. [528]

*Effect of section.*—Any trading profit of the Central Authority is to be applied for such electricity purposes as that Authority shall think fit, subject to the control of the Minister. Similarly, any profit made by an Area Board is to be applied for such purposes of the Area Board as that Board, with the consent of the Central Authority, shall think fit.

*Central Authority.*—The British Electricity Authority (s. 1 (3), *ante*). For the constitution of this body, see s. 3, *ante*.

*Financial year.*—For the definition of this term, see s. 67 (1), *post*.

*Area Board.*—See s. 1 (3), *ante*.

*The Minister.*—The Minister of Fuel and Power (s. 67 (1), *post*).

**45. Sums which are to be chargeable to revenue account.**—The Central Authority and the Area Boards shall charge to revenue account in every year all charges which are proper to be made to revenue account, including, in particular, proper allocations to the central reserve fund (but not including, in the case of an Area Board, allocations to an area reserve fund), proper provision for the redemption of capital and proper provision for depreciation of assets or for renewal of assets, and all payments (including the payments which are by the relevant provision of this Act, or by any other relevant enactment, to be deemed to be capital payments) which fall to be made in that year to any local authority under Part II of this Act in respect of any loan of that local authority, and references in this Act to outgoings properly chargeable to revenue account shall be construed accordingly. [529]

*General note.*—At the Committee Stage of the Bill in the House of Commons amendments designed to tie down the Central Authority and Area Boards as to the sums to be chargeable to revenue were resisted on the ground that too heavy burdens should not be imposed upon these Authorities in view of a possible change of circumstances in the future (see H. of C. Official Report, S.C.E., May 8, 1947, cols. 959-961).

*Central Authority.*—The British Electricity Authority (s. 1 (3), *ante*). For the constitution of this body, see s. 3, *ante*.

*Area Boards.*—See s. 1 (3), *ante*.

*Central and area reserve funds.*—See s. 43, *ante*.

*Definitions.*—For definitions of "local authority" and "loan," see s. 67 (1), *post*.

**46. Accounts and audit of Central Authority and Area Boards.**—(1) The Central Authority and each Area Board shall keep proper accounts and other records in relation to the business of that Authority or the business of that Board, as the case may be, and shall prepare in respect of each financial year a statement of accounts in such form as the Minister, with the approval of the Treasury, may direct, being a form which shall conform with the best commercial standards. [530]

(2) The form of the said statement shall be such as to secure the provision of separate information as respects the generation of electricity, the distribution of electricity, and each of the main other activities of the Electricity Board concerned, and to show as far as may be the financial and operating results of each such activity. [531]

(3) The accounts of the Central Authority and of every Area Board shall be audited by auditors to be appointed in respect of each financial year by the Minister :

Provided that no person shall be qualified to be so appointed unless he is a member of one or more of the following bodies :—

The Institute of Chartered Accountants in England and Wales ;  
 The Society of Incorporated Accountants and Auditors ;  
 The Society of Accountants in Edinburgh ;  
 The Institute of Accountants and Actuaries in Glasgow ;  
 The Society of Accountants in Aberdeen ;  
 The Association of Certified and Corporate Accountants, Limited.

[532]

(4) So soon as the accounts of any Area Board have been audited, they shall send the statement of their accounts referred to in subsection (1) of this section to the Central Authority together with a copy of any report made by the auditors on that statement or on the accounts of the Board. [533]

(5) So soon as the accounts of the Central Authority have been audited, they shall send a copy of the statement of their accounts referred to in subsection (1) of this section to the Minister together with a copy of any report made by the auditors on that statement or on the accounts of the Authority and shall also send copies of the statements of accounts of every Area Board to the Minister together with any reports on those statements or accounts as aforesaid, and copies thereof shall be made available to the public at a reasonable price. [534]

(6) The Minister shall lay a copy of every such statement and report before each House of Parliament. [535]

*General note.*—This section is for the most part common form in legislation of this kind. Note, however, the provisions of sub-s. (2), designed to trace the sources of profit or loss in the activities of an Electricity Board.

*Central Authority.*—The British Electricity Authority (s. 1 (3), *ante*). For the constitution of this body, see s. 3, *ante*.

*Area Board.*—See s. 1 (3), *ante*.

*Financial year.*—For the definition of this term, see s. 67 (1), *post*.

*The Minister.*—The Minister of Fuel and Power (s. 67 (1), *post*).

*Electricity Board concerned.*—The term “Electricity Board” comprises any of the following: the British Electricity Authority, any of the Area Boards and the North of Scotland Board (s. 1 (3), *ante*).

#### 47. Provisions as to North of Scotland Board. [536]

### PART IV

#### MISCELLANEOUS AND GENERAL

##### *Non-statutory undertakings*

48. **Acquisition of non-statutory undertakings.**—(1) This section applies to any person, not being a body to whom Part II of this Act applies, who at the passing of this Act is engaged in supplying electricity to the general public and who, at any time after the nineteenth day of November, nineteen hundred and forty-five, has incurred or incurs, in respect of works approved by the Minister for the purposes of this section (whether before or after the execution of the works) expenditure properly chargeable to capital account ; and in this section any such person is referred to as “the undertakers,” and his business, so far as it consists of the supply of electricity to the general public, is referred to as “the electricity undertaking.” [537]

(2) The undertakers may, at any time before the expiration of the period of twelve months beginning with the date of the passing of this Act, serve on the Central Authority a notice requiring that the electricity undertaking shall be transferred under this section, and thereupon the following provisions of this section shall have effect. [538]

(3) On such date, not being later than six months after the service of the notice, as may be agreed between the undertakers and the Central Autho-

riety or, in default of agreement, determined by the Minister (which date is hereafter in this section referred to as "the date of transfer"), all property of the undertakers which was, immediately before the date of transfer, wholly or mainly used for the purposes of the electricity undertaking shall, by virtue of this Act, vest in the Area Board whose area comprised the whole or the main part of the area of supply of the undertakers, and shall vest free of any mortgage or other incumbrance. [539]

(4) For the purpose of transferring to the said Area Board agreements to which the undertakers were a party immediately before the date of transfer and which they entered into for the purposes of the electricity undertaking, so far as those agreements remain to be performed after the date of transfer, every such agreement, whether in writing or not, and whether or not of such a nature that rights, liabilities and obligations thereunder could be assigned by the undertakers shall, unless its terms or subject matter make it impossible, have effect, as from the date of transfer, subject to the like modifications (with the substitution of references to the date of transfer for references to the vesting date) as agreements of bodies to whom Part II of this Act applies which are transferred to the Area Board under that Part. [540]

(5) The provisions of Part II of this Act relating to the disclaimer of agreements and leases shall apply to any agreements or leases which are transferred to the said Area Board under this section in like manner as they apply to agreements and leases of bodies to whom that Part applies, subject to the modification that for references to the vesting date there shall be substituted references to the date of transfer. [541]

(6) Subject to the provisions of this section, there shall be paid by the Central Authority to the undertakers, by way of compensation for the transfer of the electricity undertaking, such amount as the undertaking might have been expected to realise if—

(a) it had been sold as a going concern on the date of transfer in the open market by a willing seller to a willing buyer ;

(b) the effect of the sale had been to transfer to the buyer the property, rights, liabilities and obligations which are transferred or granted to the Area Board by or under this section, except any property or rights, which are transferred or granted on terms agreed or determined in accordance with regulations made under this section ; and

(c) this Act had not been passed. [542]

(7) Any question arising under this section as to—

(a) whether a particular person is a person to whom this section applies ;

(b) what property of the undertakers vests in the Area Board under subsection (3) of this section ;

(c) what agreements of the undertakers are to have effect in accordance with subsection (4) of this section ;

(d) what compensation is to be paid under subsection (6) of this section ;

shall, in default of agreement between the undertakers and the Central Authority, be determined by arbitration under this Act, and the provisions of Part II of this Act relating to the arbitration tribunal shall apply for the purpose of determining questions under this section and any questions which, under regulations made under this section, are to be determined by arbitration under this Act, as they apply for the purpose of determining questions under the provisions of Part II of this Act or any regulations made thereunder. [543]

(8) Subsections (2) and (4) of section fifteen of this Act shall apply to the undertakers in like manner as they apply to a local authority subject to the modifications that for references to property held or used by the local

authority in their capacity as authorised undertakers there shall be substituted references to property held or used by the undertakers for the purposes of the electricity undertaking, for references to other capacities of the local authority there shall be substituted references to other purposes of the company and for references to the Minister of Health there shall be substituted references to the Minister and for references to the vesting date there shall be substituted references to the date of transfer, and any question whether any property is or was (for the purposes of the said subsection (2) as so applied) held or used partly for the purposes of the electricity undertaking and partly for other purposes shall, in default of agreement, be determined by arbitration under this Act. [544]

(9) Regulations may make provision, in a case where property vested in an Area Board under this section was, immediately before the date of transfer, subject to a mortgage or other incumbrance, for the payment to the mortgagee or incumbrancer of the compensation or any part of the compensation payable in respect of that property, or may make other provision for the protection of mortgagees and incumbrancers of any such property. [545]

(10) Where at the date of transfer any legal proceedings or any application to any authority under any enactment are pending by or against the undertakers in connection with any property, rights, liabilities or obligations which are vested in or transferred to an Area Board under this section, the Board, if the circumstances so require, may be added as a party to the proceedings or application or may be substituted for the undertakers as a party to the proceedings or application. [546]

(11) Nothing in this section shall operate to transfer any cash or investments of the undertakers to an Area Board, and nothing in this section shall affect—

- (a) any right, liability or obligation with respect to the borrowing of money by the undertakers or to the raising of money by the undertakers by the issue of securities ;
- (b) any right, liability or obligation (if the undertakers are a company) under any agreement for the rendering by any person of services to the undertakers as a director (other than a managing director or a director whose functions are substantially those of an employee) ;
- (c) any right to, or liability to pay, any debt which became due before, or was in respect of a consideration wholly executed before, the date of transfer ; or
- (d) any right to, or liability to pay, any damages which accrued before the date of transfer. [547]

(12) Regulations may require any person who is or may be a person to whom this section applies to produce such books of account, records and documents, to supply copies of and extracts from such books, records and documents, and to furnish such other information as may reasonably be required—

- (a) by the Minister for the purpose of ascertaining whether or not this section applies to that person, or for other purposes arising out of the provisions of this section ; or
- (b) by any Electricity Board for the purpose of facilitating the taking over of the electricity undertaking of that person by them on the date of transfer ;

and to provide facilities for the examination of any such books, records and documents, and the taking of copies thereof and extracts therefrom, and facilities for the verification of other information furnished under the regulations ; and such regulations may make provision as to the manner, time and place in or on which any requirement under the regulations is to be complied

with, and shall provide for the payment to any such person of expenses reasonably incurred by him in complying with any requirements made by or under the regulations. [548]

(13) For the purposes of this section, a person shall, when supplying electricity to any other person, be deemed to be supplying electricity to the general public unless the electricity is supplied for the purposes of a trade or business and the relationship between the person giving the supply and the person supplied is that of a holding company and a subsidiary company, or *vice versa*, or either of the said persons is, in some other way, able to exercise a substantial measure of control over the carrying on of the trade or business of the other person, and any question as to whether a supply of electricity to any person is a supply to the general public shall, in default of agreement between the undertakers and the Central Authority, be determined by arbitration under this Act. [549]

(14) The foregoing provisions of this section shall, in their application to any undertakers whose area of supply is wholly or mainly comprised in the North of Scotland District, have effect with the substitution for references to the Minister of references to the Secretary of State, and for references to the Central Authority or to an Area Board of references to the North of Scotland Board. [550]

*General note.*—Non-statutory undertakings vary enormously in size and in area of supply. In view of the difficulties involved, it was not originally intended that they should be transferred to the new Authorities and the present section, which is in reality an addendum to Part II of the Act, *ante*, did not appear in the Bill as originally presented. In the limited circumstances in which the section applies, it is entirely for the undertakers concerned to elect to be taken over or not. In the former event notice must be given to the Central Authority before August 13, 1948.

*November 19, 1945.*—The date when the Government's decision to nationalise the electricity supply industry was first made known.

*The Minister.*—The Minister of Fuel and Power (s. 67 (1), *post*).

*Central Authority.*—The British Electricity Authority (s. 1 (3), *ante*). For the constitution of this body, see s. 3, *ante*.

*Service of notices.*—For the general provisions of the Act as to notices, see s. 63, *post*.

*Determined by the Minister.*—In connection with this provision, note the Minister's power under s. 66 (1), *post*, in any case where he deems it advisable, to hold public inquiries as to any matter under the Act.

*Disclaimer of agreements and leases.*—See s. 18, *ante*.

*Vesting date.*—Such date on or after April 1, 1948, not being less than six months after the establishment of the British Electricity Authority nor less than three months after the establishment of all the Area Boards and the definition by order of their areas, as the Minister of Fuel and Power may by order appoint. April 1, 1948, has been so appointed (ss. 14 (1), *ante*, and 67 (1), *post*, and see the notes thereto).

*Regulations.*—On September 24, 1947, the Minister of Fuel and Power, under s. 35, *ante*, and this section, made the Electricity (Information) Regulations, 1947, S. R. & O., 1947, No. 2079, *post*.

For the general provisions applicable to regulations under the Act, see s. 64, *post*. Any regulations under the section are to be laid before Parliament under s. 64 (3), *post*; but see note thereto. As to offences against regulations, see s. 61 (2), *post*.

*Determined by arbitration.*—Arbitrations under this section will be heard and determined by the Electricity Arbitration Tribunal under the provisions of ss. 31–33, *ante*.

*Arbitration tribunal.*—The Electricity Arbitration Tribunal (s. 31 (1), *ante*).

*Legal proceedings.*—This expression is not defined in the Act. In the Bankers' Books Evidence Act, 1879, s. 10 (8 Halsbury's Statutes 238), however, it was defined for the purposes of that Act as meaning any civil or criminal proceeding or inquiry in which evidence is or may be given, including an arbitration.

*Any Electricity Board.*—This term comprises any of the following: the British Electricity Authority, any of the Area Boards and the North of Scotland Board (s. 1 (3), *ante*).

*Definitions.*—As to "authorised undertakers," see s. 67 (1) and Sched. II, *post*. As to "holding company" and "subsidiary company," see s. 67 (1), *post*, and s. 18 of the Companies Act, 1947 (10 & 11 Geo. 6, c. 47). For definitions of "lease," "local authority," "company," "securities" and "North of Scotland Board," see s. 67 (1), *post*.

### *Further Provisions relating to Electricity Supply*

**49. Supply of electricity to railways.**—(1) As from the vesting date, it shall be the duty of the Central Authority to provide, except in the North of Scotland District, and it shall be the duty of the North of Scotland Board to provide in that District, a supply of electricity to meet the requirements for haulage or traction of any railway undertakers, and an Area Board shall

not, without the approval of the Central Authority, supply electricity to any railway undertakers for the purposes of haulage or traction. [551]

(2) The terms and conditions on which electricity is supplied by an Electricity Board to any railway undertakers for the purposes of haulage or traction shall be determined in accordance with regulations made by the Minister and the Minister of Transport jointly, or, in the case of a supply by the North of Scotland Board, the Secretary of State and the Minister of Transport jointly, and such regulations shall make provision for securing that the charges made for any such supply and the other terms and conditions on which it is provided are such as to avoid financial loss resulting to the Electricity Board from the provision of the supply. [552]

(3) Where electricity is supplied by an Electricity Board to any railway undertakers for the purposes of haulage or traction, the Board may enter into an agreement with the railway undertakers for the use of that supply, on such terms and conditions as may be agreed, for any other purposes for which electricity may be required by the railway undertakers :

Provided that an Area Board shall not make an agreement under this subsection which involves the use of the supply outside the area of that Board, unless the agreement has been approved by the Central Authority. [553]

(4) The Central Authority may, with the approval of the North of Scotland Board, provide in the North of Scotland District a supply of electricity to railway undertakers under this section, and a supply provided by the Central Authority outside the said District may, with the like approval, be used in that District. [554]

(5) The North of Scotland Board may, with the approval of the Central Authority, provide outside the North of Scotland District a supply of electricity to railway undertakers under this section, and a supply provided by the North of Scotland Board in the said District may, with the like approval, be used outside that District. [555]

(6) Where an Area Board provide within their area, with the approval of the Central Authority, a supply of electricity to any railway undertakers under this section, that supply may be used outside the area of the Area Board :

Provided that any such supply of electricity shall not be used in the North of Scotland District without the approval of the North of Scotland Board. [556]

(7) Without prejudice to any other enactment providing for the protection of telegraphic lines belonging to or used by the Postmaster General, any electricity supplied under this section to any railway undertakers shall be used in such manner as not to cause, or to be likely to cause, any interference (whether by induction or otherwise) with any such telegraphic line, or with telegraphic communication by means of any such line.

In this subsection the expression " telegraphic line " has the same meaning as in the Telegraph Act, 1878. [557]

*Effect of section.*—This section requires the Central Authority to provide railway companies with the electricity they require for haulage or traction and forbids the Area Boards to do so without the consent of the Central Authority. Provision is made as to the terms and conditions of supply.

*Vesting date.*—Such date on or after April 1, 1948, not being less than six months after the establishment of the British Electricity Authority nor less than three months after the establishment of all the Area Boards and the definition by order of their areas, as the Minister of Fuel and Power may by order appoint. April 1, 1948, has been so appointed (ss. 14 (1), *ante*, and 67 (1), *post*, and see the notes thereto).

*Central Authority.*—The British Electricity Authority (s. 1 (3), *ante*). For the constitution of this body, see s. 3, *ante*.

*Area Board.*—See s. 1 (3), *ante*.

*An Electricity Board.*—The term " Electricity Board " comprises any of the following : the British Electricity Authority, any of the Area Boards and the North of Scotland Board (s. 1 (3), *ante*).

*Regulations.*—Up to the time of going to press, no regulations under this section had been made.



For the general provisions applicable to regulations under the Act, see s. 64, *post*. Any regulations under the section are to be laid before Parliament under s. 64 (3), *post*; but see note thereto. As to offences against regulations, see s. 61 (2), *post*.

*The Minister.*—The Minister of Fuel and Power (s. 67 (1), *post*).

*Such as to avoid financial loss.*—The charges for electricity supply to the railways are to be such as to avoid financial loss to the Electricity Board concerned. The point here at issue is that, even if British railways are nationalised, it is important to have a true account of their position and activities. Electrification of the railways is likely to increase, and to have electricity supplied at less than cost would be equivalent to a hidden subsidy.

*Protection of telegraphic lines.*—See, for instance, ss. 7-9 of the Telegraph Act, 1878 (19 Halsbury's Statutes 265 *et seq.*).

*Telegraphic line.*—S. 2 of the Telegraph Act, 1878 (19 Halsbury's Statutes 261) defines this term as follows: "The expression 'telegraphic line' means telegraphs, posts, and any work (within the meaning of the Telegraph Act, 1863) and also any cables, apparatus, pneumatic or other tube, pipe or thing whatsoever used for the purpose of transmitting telegraphic messages or maintaining telegraphic communication, and includes any portion of a telegraphic line as defined by this Act."

*Definitions.*—For definitions of "North of Scotland Board," "railway undertakers" and "enactment," see s. 67 (1), *post*.

**50. Use of heat from generating stations.**—(1) It shall be the duty of the Central Authority to investigate methods by which heat obtained from or in connection with the generation of electricity may be used for the heating of buildings in neighbouring localities, or for any other useful purpose, and the Authority may accordingly conduct, or assist others in conducting, research into any matters relating to such methods of using heat. [558]

(2) Any Electricity Board may themselves provide, or assist other persons to provide, for the heating of buildings by such methods as aforesaid or otherwise for the use of heat obtained as aforesaid. [559]

(3) Any Electricity Board may, in accordance with a scheme submitted by them to the Minister and approved by order of the Minister, exercise for the purposes mentioned in the last foregoing subsection any powers of that Board under this Act (including any enactments incorporated therewith) or the Electricity (Supply) Acts, 1882 to 1936, or any local enactment, being powers relating to the breaking-up of streets, railways and tramways, in like manner and subject to the like provisions and restrictions as they are exercisable for the purposes of the supply of electricity, subject to such adaptations as may be prescribed by the order:

Provided that, in the case of a scheme of the North of Scotland Board, the scheme shall be submitted to, and approved by order of, the Secretary of State. [560]

(4) Any order made under this section shall be subject to special parliamentary procedure. [561]

*General note.*—Though s. 2 (1), *ante*, empowers the Central Authority generally to conduct research into matters affecting the supply of electricity and to assist others conducting such research, the present section makes it obligatory on the Central Authority to investigate methods of using the waste heat from generating stations for the heating of buildings, etc., and at the same time empowers (but not requires) the same Authority to conduct research into such matters and to assist others engaged in such research. Thus utilisation of a valuable bye-product is bound up with the possibilities of district heating in regard to which experiments have been proceeding for some time.

*Central Authority.*—The British Electricity Authority (s. 1 (3), *ante*). For the constitution of this body, see s. 3, *ante*.

*Any Electricity Board.*—The term "Electricity Board" comprises any of the following: the British Electricity Authority, any of the Area Boards and the North of Scotland Board (s. 1 (3), *ante*).

*The Minister.*—The Minister of Fuel and Power (s. 67 (1), *post*).

*Orders of the Minister and special parliamentary procedure.*—For the general provisions applicable to orders under the Act, see s. 64, *post*. Note that, in the case of orders of the Minister of Fuel and Power under sub-s. (3) of the present section, special parliamentary procedure is to apply, with the result that the provisions of s. 64 (3), *post*, requiring such orders to be laid before Parliament do not apply. In their place the reference to "special parliamentary procedure" brings into play the Statutory Orders (Special Procedure) Act, 1945 (38 Halsbury's Statutes 411), under which an order stated to be subject to special parliamentary procedure is to be of no effect until it has been laid before Parliament by the Minister responsible and brought into operation in accordance with the provisions of that Act.

*Electricity Supply Acts, 1882 to 1936.*—These are the Electric Lighting Act, 1882 (7 Halsbury's Statutes 686); the Electric Lighting Act, 1888 (7 Halsbury's Statutes 702); the Electric Lighting Act, 1909 (7 Halsbury's Statutes 744); the Electricity (Supply) Act, 1919 (7 Halsbury's Statutes 754); the Electricity (Supply) Act, 1922 (7 Halsbury's Statutes 778);



the Electricity (Supply) Act, 1926 (7 Halsbury's Statutes 792); the Electricity (Supply) Act, 1928 (7 Halsbury's Statutes 826); the Electricity (Supply) Act, 1933 (26 Halsbury's Statutes 137); the Electricity (Supply) Act, 1935 (28 Halsbury's Statutes 51); the Electricity Supply (Meters) Act, 1936 (29 Halsbury's Statutes 133); and Acts applying to Scotland only.

*Powers relating to the breaking-up of streets, etc.*—As to powers under the Electricity (Supply) Acts, 1882 to 1936, *supra*, see in particular the Electric Lighting Act, 1882, ss. 3 (9), 13 (7 Halsbury's Statutes 687, 693), and the Electric Lighting Act, 1909, s. 3 (7 Halsbury's Statutes 745). Of these s. 13 of the Act of 1882, *supra*, is modified as from the vesting date by s. 57 and Sched. IV, Part I, *post*.

As to the general provisions incorporated in many local enactments, see the Electric Lighting (Clauses) Act, 1899, Sched., ss. 12, 15–17 and Appendix (7 Halsbury's Statutes 712, 714 *et seq.*, 740). Of these ss. 12, 16 and 17 and the Appendix are modified by s. 57 and Sched. IV, Part III, *post*.

Note that, as from April 1, 1948, the Schedule to the Electric Lighting (Clauses) Act, 1899, as so modified, is incorporated in the present Act (s. 57 (2), *post*); hence the words "including any enactments incorporated therewith" in sub-s. (3) of the present section.

As to the other powers of breaking-up, etc., as in the present Act, see s. 51, *infra*.

*Definitions.*—For definition of "enactments," "local enactment" and "North of Scotland Board," see s. 67 (1), *post*.

**51. Power to break up streets for certain purposes.**—(1) Where any Area Board or the North of Scotland Board—

- (a) acquire a bulk supply of electricity which is received by them outside their area or, as the case may be, outside the North of Scotland District; or
- (b) provide a supply of electricity outside their area or, as the case may be, outside the North of Scotland District,

the Board may, in accordance with proposals submitted by them to the Minister and approved by him, exercise for the purpose of such acquisition or the provision of such supply any powers of that Board under this Act (including any enactment incorporated therewith) or the Electricity (Supply) Acts, 1882 to 1936, or any local enactment, being powers relating to the breaking up of streets, railways and tramways which would not otherwise be so exercisable:

Provided that, in the case of the North of Scotland Board, the proposals shall be submitted to and approved by the Secretary of State, and the references to the enactments aforesaid shall include a reference to the Act of 1943. [562]

(2) The powers conferred by this section shall be exercisable in like manner and subject to the like provisions and restrictions as they are exercisable by the Board concerned for the purpose of the supply of electricity in the area or District of the Board. [563]

*General note.*—The powers of breaking-up, etc., referred to in the note to the previous section will normally be sufficient for Area Boards, but the present section makes it clear that these powers are not to be limited to the particular areas of the Boards but may be exercised outside those areas where electricity is so received or supplied by them.

*Area Board.*—See s. 1 (3), *ante*.

*The Minister.*—The Minister of Fuel and Power (s. 67 (1), *post*).

*Electricity (Supply) Acts, 1882 to 1936.*—See note to s. 50, *ante*.

*Definitions.*—For definitions of "North of Scotland Board" and "local enactment," see s. 67 (1), *post*.

**52. Extension of period for certification of meters.**—The period of ten years specified in section three of the Electricity Supply (Meters) Act, 1936 (which provides that certain meters shall be deemed to be proper meters for ascertaining the value of a supply), being the period after which that section is to cease to apply to any meters, shall be extended by a further period of five years, and accordingly for the words "ten years" in subsection (3) of that section there shall be substituted the words "fifteen years". [564]

*Certification of meters.*—Under the Schedule to the Electric Lighting (Clauses) Act, 1899 (7 Halsbury's Statutes 731), as amended by the Electric Lighting Act, 1909, s. 11 and Sched. II (7 Halsbury's Statutes 749, 754), the value of the supply of electrical energy given by undertakers to consumers is to be ascertained by appropriate meters duly certified as capable of ascertaining that value within such limits of error as may be allowed, certification being carried out by meter examiners appointed under the Electricity Supply (Meters) Act, 1936 (29 Halsbury's Statutes 133).

S. 3 of the same Act provides that meters installed on the premises of ordinary consumers before July 1, 1938 (unless certified or the subject of special agreement) are to be deemed proper meters for all purposes until (a) they are disconnected and removed, or (b) a period of ten years from July 1, 1938, has elapsed, whichever is the earlier. The effect of the present section is to substitute a period of fifteen years for ten years.

Note that, by Regulation 60CB (2A) of the Defence (General) Regulations, 1939 (39 Halsbury's Statutes 1026), the period of ten years had already been extended by two years.

As from August 1, 1943, compulsory certification has been suspended, certification becoming merely optional, at the request and expense of the authorised undertakers (Regulation 60CB of the Defence (General) Regulations, 1939, as amended (39 Halsbury's Statutes 1026)). Regulation 60CB now has effect by virtue of the Supplies and Services (Transitional Powers) Act, 1945 (38 Halsbury's Statutes 629) and the Supplies and Services (Extended Purposes) Act, 1947 (10 & 11 Geo. 6, c. 55).

### *Conditions of Employment and Pension rights*

**53. Machinery for settling terms and conditions of employment of staff, etc.**—(1) Except so far as they are satisfied that adequate machinery exists for achieving the purposes of this section, it shall be the duty of the Central Authority to seek consultation with any organisation appearing to them to be appropriate with a view to the conclusion between the Authority and that organisation of such agreements as appear to the parties to be desirable with respect to the establishment and maintenance of machinery for—

- (a) the settlement by negotiation of terms and conditions of employment of persons employed by Electricity Boards, with provision for reference to arbitration in default of such settlement in such cases as may be determined by or under the agreements; and
- (b) the promotion and encouragement of measures affecting the safety, health and welfare of persons employed by Electricity Boards and the discussion of other matters of mutual interest to the Boards and such persons, including efficiency in the operation of the services of the Boards. [565]

(2) In exercising their powers under the last foregoing subsection the Central Authority shall consult with the Area Boards and the North of Scotland Board. [566]

(3) It shall be the duty of every Area Board and of the North of Scotland Board to comply with any such agreement as aforesaid. [567]

(4) The Central Authority shall send to the Minister, the Secretary of State and the Minister of Labour and National Service copies of any such agreement as aforesaid and of any instrument varying the terms of any such agreement. [568]

*General note.*—This is the first of four sections dealing with employment and employees, and upon its efficacy depends the harmonious working of the electricity supply industry. The succeeding sections make provision as to pensions, compensation for officers detrimentally affected by the Act and proceedings before referees appointed by the Minister of Labour and National Service in connection with such pensions or compensation.

*Central Authority.*—The British Electricity Authority (s. 1 (3), *ante*). For the constitution of this body, see s. 3, *ante*.

*Duty to seek consultation.*—Note that the negotiations for settling conditions of employment, etc., are to be initiated by the Central Authority and conducted on a national scale. This was considered preferable to having district or area negotiations.

*Appropriate organisations.*—Included in the organisations to be consulted are likely to be the Electrical Power Engineers Association, the Electrical Trades Union, the Amalgamated Engineering Union, the National Union of Enginemen and Firemen, the National Union of General and Municipal Workers and the Transport and General Workers Union, which between them cover 95 per cent. of the technical and manual workers in electricity supply. Organisations representing the clerical workers, including the National Association of Local Government Officers, would also be included (see 439 H. of C. Official Report 463-464).

*Paragraphs (a) and (b).*—These paragraphs show that the scope of the negotiating machinery to be established is very much wider than the mere settlement of wage rates. At the Committee Stage of the Bill in the House of Commons the Minister of Fuel and Power said: "The idea we have in mind is this, that there should be created as far as is practicable, and having regard to the position of the managements in these contemplated undertakings, something in the nature of a co-partnership and a mutual understanding, not only regarding wages, conditions of labour, safety, health and welfare and other amenities, but also as regards the mutual desire of both parties to consider all matters which are likely to prove beneficial to the industry, in the sense of reorganisation, expansion, research and the like" (H. of C. Official Report, S.C.E., May 13, 1947, col. 989).

*Electricity Boards.*—"Electricity Board" comprises any of the following: the British Electricity Authority, any of the Area Boards and the North of Scotland Board (s. 1 (3), *ante*).

*Area Board.*—See s. 1 (3), *ante*.

*North of Scotland Board.*—For definition, see s. 67 (1), *post*.

*The Minister.*—The Minister of Fuel and Power (s. 67 (1), *post*).

**54. Provisions as to pension rights.**—(1) The Minister and the Secretary of State may make joint regulations for all or any of the following purposes, that is to say—

- (a) for providing pensions to or in respect of persons who are or have been in the employment of an Electricity Board or a Consultative Council, or persons who have been members of the Central Electricity Board or have been employed by any body to whom Part II of this Act applies or have been employed whole-time for the purpose of administering undertakings or parts of undertakings of authorised undertakers, but who have not been taken into the employment of an Electricity Board as aforesaid;
- (b) for the establishment and administration of pension schemes and pension funds for the purposes of the foregoing paragraph, for the continuance, amendment, repeal or revocation of existing pension schemes relating in whole or in part to the like purposes and of enactments relating thereto and of trust deeds, rules or other instruments made for the purposes thereof, for the transfer in whole or in part, or for the extinguishment, of liabilities under any such existing pension schemes, and for the transfer in whole or in part, or winding up, of pension funds held for the purposes of any such existing pension schemes, so, however, that nothing in this paragraph shall be construed as authorising the diversion of any such funds to purposes other than those of the foregoing paragraph;
- (c) for making any provision consequential on any such provision as aforesaid including provision for the dissolution or winding up of bodies, whether incorporated or not, the continued existence whereof is unnecessary having regard to the regulations. [569]

(2) Where provision is made by any such regulations for the amendment, repeal or revocation of any existing pension scheme or of any enactment relating thereto or any trust deed, rules or other instrument made for the purposes thereof, or for the transfer or extinguishment of any liability under any pension scheme or for the transfer or winding up of any pension fund held for the purposes of any such scheme, the regulations shall be so framed as to secure that persons having pension rights under the scheme, whether such persons as are mentioned in paragraph (a) of the last foregoing subsection or not, are not placed in any worse position by reason of the amendment, repeal, revocation, transfer, extinguishment or winding up:

Provided that this subsection shall have effect subject to such limitations as may be prescribed for meeting cases in which, in connection with any provision made by this Act or in anticipation of the making of any such provision, pension rights have been created otherwise than in the ordinary course. [570]

(3) Regulations made under this section shall not be invalid by reason that in fact they do not secure that persons having pension rights are not placed in any worse position by reason of any such amendment, repeal, revocation, transfer, extinguishment or winding up as is mentioned in the last foregoing subsection, but if the Minister and the Secretary of State are satisfied or it is determined as hereinafter mentioned that any such regulations have failed to secure that result, the Minister and the Secretary of State shall as soon as possible make the necessary amending regulations.

Any dispute arising as to whether or not the said result has been secured

by any regulations made under this section shall be referred to a referee or board of referees appointed by the Minister of Labour and National Service, after consultation with the Lord Chancellor or, where the proceedings are to be held in Scotland, after consultation with the Secretary of State, for his or their determination thereon, and the decision of that referee or board shall be final. [571]

(4) Without prejudice to the generality of the foregoing provisions of this section, regulations made under this section may contain provisions authorising any person who, being a participant in any pension scheme to which the regulations relate, becomes a member of an Electricity Board, being treated as if his service as a member of the Board were service in the employment of the Board, and the pension rights of any such person resulting from the operation of any such provision shall not be affected by any provision of this Act which requires that the pensions, if any, which are to be paid in the case of members of the Board are to be determined by the Minister with the approval of the Treasury. [572]

(5) Subject to any regulations made under this section, the provisions of this Act which vest liabilities and obligations of a body to whom Part II of this Act applies in an Electricity Board shall apply in relation to customary obligations of the body in respect of pensions, notwithstanding that the body was under no legal obligation in respect of those pensions, and if any question arises as to the existence or extent of any such customary obligation, the question shall, in default of agreement, be referred to a referee or board of referees appointed by the Minister of Labour and National Service, after consultation with the Lord Chancellor, or where the proceedings are to be held in Scotland, after consultation with the Secretary of State, and the decision of that referee or board shall be final and the Electricity Board shall give effect to that decision. [573]

(6) Nothing in this section, and in particular nothing in subsection (2) thereof, shall be taken to derogate from the power conferred by subsection (4) of section sixty-nine of the National Insurance Act, 1946, to make regulations providing for the modifying or winding up of pension schemes in connection with the passing of that Act. [574]

(7) Regulations made under this section may contain such supplementary and consequential provisions as the Minister and the Secretary of State think necessary, including provisions as to the manner in which questions arising under the regulations are to be determined and provisions adapting, modifying or repealing enactments, whether of general or special application. [575]

(8) Regulations made for the purposes of this section may be made so as to have effect from a date prior to the making thereof, so, however, that so much of any regulations as provides that any provision thereof is to have effect from a date prior to the making thereof shall not place any person other than an Electricity Board in a worse position than he would have been if the regulations had been made to have effect only as from the date of the making thereof. [576]

*The Minister.*—The Minister of Fuel and Power (s. 67 (1), *post*).

*May make.*—Note that, though it is intended that regulations shall be made, the provision is permissive only. *Aliter*, in the case of the Coal Industry Nationalisation Act, 1946, s. 37 (39 Halsbury's Statutes 286), which opens: "Regulations shall be made".

*Regulations.*—Up to the time of going to press, no regulations under this section had been made.

For the general provisions applicable to regulations under the Act, see s. 64, *post*. Any regulations under the section are to be laid before Parliament under s. 64 (3), *post*; but see note thereto. As to offences against regulations, see s. 61 (2), *post*.

*Electricity Board.*—The term "Electricity Board" comprises any of the following: the British Electricity Authority, any of the Area Boards and the North of Scotland Board (s. 1 (3), *ante*).

*Consultative Council.*—For the establishment of these councils, see s. 7, *ante*.

*National Insurance Act, 1946, s. 69 (4).*—39 Halsbury's Statutes 481. Under this subsection provision may be made for modifying or winding up, in connection with the passing

of that Act, any scheme for the provision of pensions or other benefits (excluding any scheme established by any enactment repealed by that Act but including any other scheme established by or under any enactment and any scheme evidenced only by one or more policies of insurance), by regulations made by such Minister of the Crown or Government department as may be determined by the Treasury to be appropriate in relation to the scheme to which the regulations are to apply or, if the Treasury determine that there is no appropriate Minister or department, by the Chief Registrar of Friendly Societies.

*Definitions.*—As to “authorised undertakers,” see s. 67 (1) and Sched. II, *post.* For definitions of “pensions,” “pension schemes,” “pension funds,” “pension rights” and “enactments,” see s. 67 (1), *post.*

**55. Compensation to officers in connection with transfers.**—(1) The Minister and the Secretary of State jointly shall by regulations require every Electricity Board to pay in such cases and to such extent as may be specified in the regulations, compensation to officers of any body whose property, rights, liabilities and obligations vest by virtue of this Act in the Board and officers employed whole-time for the purpose of administering undertakings or parts of undertakings of authorised undertakers, being officers who suffer loss of employment or loss or diminution of emoluments or pension rights or whose position is worsened in consequence of the vesting, or in consequence of the subsequent transfer to another Electricity Board or the subsequent disposal in any other manner, of any such property, rights, liabilities or obligations. [577]

(2) The Minister shall also, in such cases and to such extent as may be specified in the regulations, by regulations require the Central Authority to pay compensation to—

(a) members of the Central Electricity Board, and

(b) Electricity Commissioners and officers of the Electricity Commissioners,

who suffer loss of employment or loss or diminution of emoluments or pension rights or whose position is worsened in consequence of the dissolution of the Central Electricity Board or, as the case may be, the Electricity Commissioners, by or under this Act. [578]

(3) Regulations made under subsection (1) or subsection (2) of this section shall, in such cases and to such extent as may be specified in the regulations, extend to persons who would have been within the said subsection (1) or, as the case may be, the said subsection (2) but for any war service in which they have been engaged.

In this subsection the expression “war service” means service in any of His Majesty’s forces and such other employment as may be specified in the regulations. [579]

(4) Different regulations may be made under this section in relation to different classes of persons, and any such regulations may be so framed as to have effect as from a date prior to the making thereof, so, however, that so much of any regulations as provides that any provision thereof is to have effect as from a date earlier than the making thereof shall not place any person other than an Electricity Board in a worse position than he would have been in if the regulations had been made to have effect only as from the date of the making thereof. [580]

(5) Regulations made under this section—

(a) shall prescribe the procedure to be followed in making claims for compensation, and the manner in which and the person by whom the question whether any or what compensation is payable is to be determined; and

(b) may in particular contain provisions enabling appeals from any determination as to whether any or what compensation is payable to be brought, in such cases and subject to such conditions as may be prescribed by the regulations, before a referee or board of referees appointed by the Minister of Labour and National

Service, after consultation with the Lord Chancellor or where the proceedings are to be held in Scotland, after consultation with the Secretary of State,

and where any such provision is made as is specified in paragraph (b) of this subsection, the decision of the referee or board of referees shall be final. [581]

(6) Nothing in this section shall be construed as enabling regulations to be made prejudicing the rights of any person under section sixteen of the Electricity (Supply) Act, 1919, or under section fifteen of and the Fourth Schedule to the Electricity (Supply) Act, 1926, or under the Compensation of Displaced Officers (War Service) (Electricity Undertakings) Order, 1946, being rights arising in consequence of events which occurred before the vesting date.

References to the said sections and Schedule shall be construed as including references to those sections and that Schedule as applied by any other enactment, with or without modifications and adaptations. [582]

(7) No regulations shall be made under this section unless a draft thereof has been laid before Parliament and has been approved by resolution of each House of Parliament. [583]

(8) The Minister of Labour and National Service may, with the consent of the Treasury, pay out of moneys provided by Parliament—

(a) to any referee or to the members of any board of referees appointed by him under this section or the last foregoing section such fees and allowances as he may with the consent of the Treasury determine; and

(b) to persons giving evidence before any such referee or board such allowances as he may with the consent of the Treasury determine. [584]

*The Minister.*—The Minister of Fuel and Power (s. 67 (1), *post*).

*Regulations.*—Up to the time of going to press, no regulations under this section had been made.

Note that under sub-s. (7), *supra*, no such regulations are to be made unless a draft thereof has been laid before Parliament and approved by resolution of both Houses.

For the general provisions applicable to regulations under the Act, see s. 64, *post*. As orders under this section are to be laid before Parliament in draft and the so-called "affirmative resolution procedure" applies, sub-s. (3) of that section, which provides that the so-called "negative resolution procedure" shall apply in most other cases, is not here applicable (see notes to s. 64, *post*).

*Every Electricity Board.*—*I.e.*, the British Electricity Authority, any of the Area Boards and the North of Scotland Board (s. 1 (3), *ante*).

*Central Authority.*—The British Electricity Authority (s. 1 (3), *ante*). For the constitution of this body, see s. 3, *ante*.

*Sub-s. (5).*—Note that paragraph (a) of this sub-section is mandatory, while paragraph (b) is permissive.

*Electricity (Supply) Act, 1919, s. 16.*—7 Halsbury's Statutes 764. This section provides for payment of compensation for deprivation of employment. It was amended by the Electricity (Supply) Act, 1922, s. 21 (7 Halsbury's Statutes 764), the Electricity (Supply) Act, 1928, s. 1 (7 Halsbury's Statutes 788), and the Electricity (Supply) Act, 1935, s. 1 (26 Halsbury's Statutes 137).

*Electricity (Supply) Act, 1926, s. 15 and Sched. IV.*—7 Halsbury's Statutes 805, 824. These provisions apply the Electricity (Supply) Act, 1919, s. 16, *supra*, as amended by the Electricity (Supply) Act, 1922, s. 21 (7 Halsbury's Statutes 788) and with further adaptations, to officers and servants of authorised undertakers affected by certain closures and restrictions.

*Compensation of Displaced Officers (War Service) (Electricity Undertakings) Order, 1946.*—S. R. & O., 1946, No. 2176. This order applies to certain displaced employees of electricity undertakers and railway companies the provisions of the Compensation of Displaced Officers (War Service) Act, 1945 (38 Halsbury's Statutes 299).

*Vesting date.*—Such date on or after April 1, 1948, not being less than six months after the establishment of the British Electricity Authority nor less than three months after the establishment of all the Area Boards and the definition by order of their areas, as the Minister of Fuel and Power may by order appoint. April 1, 1948, has been so appointed (ss. 14 (1), *ante*, and 67 (1), *post*, and see the notes thereto).

*Definitions.*—As to "authorised undertakers," see s. 67 (1) and Sched. II, *post*. For definitions of "officer" and "enactment," see s. 67 (1), *post*.

**56. Arbitration Acts not to apply to proceedings before referees or boards of referees.**—Nothing in the Arbitration Acts, 1889 to 1934, shall be con-



strued as applying to any proceedings before a referee or board of referees appointed under either of the two last foregoing sections by the Minister of Labour and National Service. [585]

*Arbitration Acts, 1889 to 1934.*—The Arbitration Act, 1889 (1 Halsbury's Statutes 453); the Arbitration Clauses (Protocol) Act, 1924 (1 Halsbury's Statutes 469); the Arbitration (Foreign Awards) Act, 1930 (23 Halsbury's Statutes 4); and the Arbitration Act, 1934 (27 Halsbury's Statutes 27).

### *Consequential Amendment of Statutory Provisions*

**57. Application, amendment and repeal of enactments relating to electricity supply.**—(1) As from the vesting date, the Electricity (Supply) Acts, 1882 to 1936, and any other enactment to which any provision of Part I of the Fourth Schedule to this Act applies, shall have effect subject to the adaptations and modifications specified in Part I of that Schedule, and the Act of 1943 shall have effect subject to the adaptations and modifications specified in Part II of that Schedule, being adaptations and modifications required for the purpose of applying the said Acts and enactments to Electricity Boards and otherwise required in consequence of the provisions of this Act. [586]

(2) The Schedule to the Electric Lighting (Clauses) Act, 1899, shall, as from the vesting date, be incorporated with this Act, and shall have effect, as so incorporated, subject to the adaptations and modifications specified in Part III of the said Fourth Schedule. [587]

(3) All local enactments in force at the vesting date and applicable to any authorised undertakers except enactments applicable to local authorities or composite companies otherwise than in their capacity as authorised undertakers, shall, as from the vesting date, have effect—

- (a) as if for references to the undertakers there were substituted references to the appropriate Board;
- (b) as if for any reference (however worded and whether expressed or implied) to the undertaking or any part of the undertaking or to the area of supply or any part of the area of supply of the undertakers there were substituted a reference to so much of the business carried on by the appropriate Board as corresponds to that undertaking or part thereof or, as the case may be, a reference to the area constituting the said area of supply or part thereof immediately before the vesting date;

and shall also have effect, as from such date as may be prescribed which may be prior to the making of the regulations but not to the vesting date, with such other adaptations and modifications (if any) as may be prescribed, being adaptations and modifications required in consequence of the provisions of this Act (including the foregoing provisions of this section) or of the Act of 1943:

Provided that the provisions of any such local enactment shall, in so far as they are inconsistent with or rendered redundant by the provisions of this Act (including the foregoing provisions of this section) or of the Act of 1943, cease to have effect, as from the vesting date.

In this subsection the expression “the appropriate Board”—

- (a) in relation to undertakers all of whose property, rights, liabilities and obligations vest by virtue of this Act in a single Electricity Board, means that Board;
- (b) in relation to undertakers, in whose case generating stations and main transmission lines vest by virtue of this Act in the Central Authority, and other parts of the undertaking vest as aforesaid in an Area Board, means—



(i) the Central Authority, as respects any enactment applicable only to the part of the undertaking vested in that Authority ;

(ii) the Area Board, as respects any enactment applicable only to other parts of the undertaking ;

(iii) both the said Authority and Board, as respects any enactment applicable both to the part vested in the Authority and to other parts of the undertaking. [588]

(4) For the purpose of securing, so far as reasonably practicable, a uniform statutory code applicable throughout the area of each Area Board and the North of Scotland District, the Minister may, as respects local enactments applicable to an Area Board, and the Secretary of State may, as respects local enactments applicable to the North of Scotland Board, by order provide for the repeal or amendment of any such enactment or for its extension to the whole of the area concerned, and for such matters consequential on or incidental to any such repeal, amendment or extension for which the Minister or the Secretary of State considers it necessary or expedient to provide.

An order under this subsection shall be subject to special parliamentary procedure. [589]

(5) Where an order made under this Act provides for the transfer of property, rights, liabilities and obligations from any Electricity Board to another such Board, that order or a subsequent order may provide for the application to the last named Board of the provisions of any local enactment applicable to the first named Board, so far as appears to the Minister or Ministers by whom the order is made necessary or expedient in consequence of the said transfer. [590]

(6) Where the undertaking of any person authorised by any enactment to supply electricity does not vest by virtue of this Act in any Electricity Board, the Minister or Secretary of State, as the case may be, may by order provide for the continued application to the undertaking, subject to such adaptations and modifications as may be necessary, of any enactments which would otherwise cease to apply to the undertaking in consequence of this section, including enactments repealed by this section. [591]

(7) As from the vesting date, the enactments mentioned in the Fifth Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule, and, where any local enactment incorporates (with or without adaptations or modifications) any provisions of the Schedule to the Electric Lighting (Clauses) Act, 1899, repealed by this subsection, or contains any provisions substantially corresponding therewith, those provisions shall cease to have effect :

Provided that—

(a) the repeal of any provision under which any special order or other order was made, being an order which would be applicable to an Electricity Board by virtue of subsection (3) of this section, shall not affect that order ;

(b) the repeal of the provisions of section sixteen of the Electricity (Supply) Act, 1919, and section fifteen of and the Fourth Schedule to the Electricity (Supply) Act, 1926, and of the Fifth Schedule to the Act of 1943 (so far as it applies the provisions aforesaid) shall not affect the rights of any person arising under any of those provisions in consequence of any event occurring before the vesting date ; and

(c) the repeal of section forty-two of and the First Schedule to the Civil Defence Act, 1939, shall not prevent the disposal of plant, equipment and property, and the application of the proceeds thereof, in accordance with Part II of the said Schedule. [592]

*Vesting date.*—Such date on or after April 1, 1948, not being less than six months after the establishment of the British Electricity Authority nor less than three months after the establishment of all the Area Boards and the definition by order of their areas, as the Minister of Fuel and Power may by order appoint. April 1, 1948, has been so appointed (ss. 14 (1), *ante*, and 67 (1), *post*, and see the notes thereto).

*Electricity (Supply) Acts, 1882 to 1936.*—See note to s. 50, *ante*.

*Electricity Boards.*—The term "Electricity Board" comprises any of the following: the British Electricity Authority, any of the Area Boards and the North of Scotland Board (s. 1 (3), *ante*). Note that various powers exercisable under earlier Acts referred to in Sched. IV, become exercisable by Electricity Boards by reason of the present section and the adaptations and modifications thereby provided.

*Electric Lighting (Clauses) Act, 1899, Sched.*—7 Halsbury's Statutes 706. This Schedule contains a number of provisions which were by that Act to be incorporated with, save as varied or excepted by, every Provisional Order made after September, 1899, by the Board of Trade under the Electric Lighting Acts (later every Special Order made by the Electricity Commissioners under the Electricity (Supply) Act, 1919, s. 26 (7 Halsbury's Statutes 772)), and every special Act passed after that date authorising the supply of electricity within any area. Special considerations were to apply to the County of London.

Note the provisions of sub-s. (7), *ante*, in this connection.

*Composite companies.*—See s. 17 (1), *ante*, and Sched. II, Part II, *post*.

*Regulations and orders.*—Up to the time of going to press, no regulations or orders under this section had been made.

For the general provisions applicable to regulations and orders under the Act, see s. 64, *post*.

Note that orders under sub-s. (4) of the present section are subject to special parliamentary procedure (see *infra*), with the result that the provisions of s. 64 (3), *post*, requiring regulations and orders under the Act to be laid before Parliament, do not apply. However, in the case of all other regulations and orders under the present section, s. 64 (3) applies; but see note thereto.

*Central Authority.*—The British Electricity Authority (s. 1 (3), *ante*). For the constitution of this body, see s. 3, *ante*.

*Area Board.*—See s. 1 (3), *ante*.

*The Minister.*—The Minister of Fuel and Power (s. 67 (1), *post*).

*Special parliamentary procedure.*—The reference to "special parliamentary procedure" in sub-s. (4), *ante*, brings into play the Statutory Orders (Special Procedure) Act, 1945 (38 Halsbury's Statutes 441), under which an order to which that Act applies is to be of no effect until it has been laid before Parliament by the Minister responsible and brought into operation in accordance with the provisions of that Act (see notes to s. 64, *post*).

*Effect of repeal.*—The Interpretation Act, 1889, s. 38 (18 Halsbury's Statutes 1005), provides, first, that where an enactment repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed, shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted.

The same section also provides that repeals shall not revive anything not in force or existing at the time when the repeal takes effect; shall not affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; shall not affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; shall not affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed; and shall not affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid. Any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture, or punishment may be imposed, as if the repealing Act had not been passed.

*Electricity (Supply) Act, 1919, s. 16, and the Electricity (Supply) Act, 1926, s. 15 and Sched. IV.*—7 Halsbury's Statutes 764, 805, 824. See notes to s. 55, *ante*.

*Civil Defence Act, 1939, s. 42 and Sched. I.*—32 Halsbury's Statutes 859, 893. S. 42 concerns the powers and duties of the Central Electricity Board in the event of damage through hostile attack, and Sched. I, Part II, lays down rules as to the disposal of certain property acquired by that Board.

*Definitions.*—As to "authorised undertakers," see s. 67 (1) and Sched. II, *post*. For definitions of "enactment," "local enactment," "local authority," "prescribed" and "North of Scotland Board," see s. 67 (1), *post*.

**58. Power to dissolve Electricity Commissioners.**—(1) The Minister may by order provide—

- (a) for dissolving the Electricity Commissioners;
- (b) for transferring to the Minister all property, rights, liabilities and obligations of the Electricity Commissioners, and for the modification of agreements so far as necessary for giving effect to the transfer of rights, liabilities and obligations thereunder;
- (c) for transferring to the Minister, the Secretary of State, the Central Authority or the North of Scotland Board any functions previously exercisable by the Electricity Commissioners under any enactment or for extinguishing any such functions;

- (d) for transferring from the Minister to the Central Authority or the North of Scotland Board such of the property, rights, liabilities and obligations transferred to him from the Electricity Commissioners as appear to the Minister to relate to any functions of the Commissioners so transferred ;
- (e) for the adaptation, modification or repeal of enactments relating to the Electricity Commissioners ; and
- (f) for matters incidental or supplementary to the matters aforesaid for which it appears to the Minister to be necessary or expedient to provide. [593]

(2) Any order made under this section shall secure that the pension rights of persons who have been Electricity Commissioners or officers of the Electricity Commissioners are not prejudiced by the order, and any pension payable in satisfaction of those rights shall be paid out of moneys provided by Parliament and shall be repaid to the Treasury by the Central Authority and the North of Scotland Board on demand to such extent as the Treasury may determine. [594]

*General note.*—Under the enactments noted below a great number of functions, some administrative and some quasi-judicial, are exercisable by the Electricity Commissioners. Their position has, however, been materially changed by the present Act, many of their duties being taken over by the Central Authority. The present section therefore empowers the Minister by order to dissolve the Electricity Commissioners and provide for the devolution of their powers and duties. Though the wording of the section is permissive, it is the intention, as in numerous similar cases, that the power shall be exercised (see H. of C. Official Report, S.C.E., May 15, 1947, col. 1041).

*The Minister.*—The Minister of Fuel and Power (s. 67 (1), *post*).

*Orders under the section.*—Up to the time of going to press, no such orders had been made. For the general provisions applicable to orders under the Act, see s. 64, *post*. Any orders under the present section are to be laid before Parliament under s. 64 (3), *post* ; but see note thereto.

*Central Authority.*—The British Electricity Authority (s. 1 (3), *ante*). For the constitution of this body, see s. 3, *ante*.

*Enactments relating to the Electricity Commissioners.*—E.g. the Electricity (Supply) Act, 1919 (7 Halsbury's Statutes 754) under which the Commissioners were constituted ; the Electricity (Supply) Act, 1922 (7 Halsbury's Statutes 778) ; the Electricity (Supply) Act, 1926 (7 Halsbury's Statutes 792) ; the Electricity (Supply) Act, 1933 (26 Halsbury's Statutes 137) ; the Electricity (Supply) Act, 1935 (28 Halsbury's Statutes 51) ; and the Electricity Supply (Meters) Act, 1936 (29 Halsbury's Statutes 133). Note that by s. 67 (1), *post*, the term "enactment" includes regulations and orders made under Act of Parliament.

*Definitions.*—For definitions of "North of Scotland Board," "pension rights" and "pension," see s. 67 (1), *post*.

**59. Assets of Electricity Associations to be applicable for compensating their officers.**—Where any body, not being a body to whom Part II of this Act applies, have among their objects the promotion or protection of the interests of electricity undertakers or any class thereof, or of the officers of electricity undertakers or any class thereof, and, by reason of the failure of the objects of the body in consequence of the provisions of this Act, the affairs of the body are being wound up, any assets of the body which, after satisfaction of all their debts and liabilities, remain undisposed of may, notwithstanding anything in any enactment or instrument defining the objects of the body or regulating their affairs, be applied in whole or in part in compensating the officers of the body. [595]

*General note.*—This section was inserted at the instance of the Incorporated Municipal Electrical Association and other associations which would be wound up when the transfer to the new Authorities had taken place. Though anxious to make adequate provision for their staffs they had been advised by Counsel that under their Memoranda of Association there was no power to devote the funds still in their possession to staff compensation. The present section makes good the omission.

*Officer.*—This term includes a managing director and a director whose functions are substantially those of an employee but not any other director ; it also includes a servant (s. 67 (1), *post*).

*Enactment.*—This term, which is defined in s. 67 (1), *post*, includes a local, private or personal Act, a provisional order confirmed by an Act, and any deed of transfer whereby statutory powers have been transferred to any authorised undertakers.

## General

**60. Power to make regulations relating to efficiency of supply and safety.**

—(1) The Minister may make such regulations as he thinks fit for the purpose of securing that any supply of electricity furnished to any consumer by an Electricity Board is regular and efficient, and that the public is so far as practicable protected from any personal injury, fire or other dangers arising from the use of electricity so furnished. [596]

(2) Any regulations made under section six of the Electric Lighting Act, 1882, and in force immediately before the vesting date shall continue in force, notwithstanding the repeal by this Act of the said section six, and shall have effect as if they had been made under this section. [597]

*Effect of section.*—The Minister is empowered to make regulations, first, to secure efficiency in electricity supplies, and secondly, to protect the public against danger. Compare the responsibility of the same Minister, as successor to the Secretary of State and the Mines Department of the Board of Trade, for safety in mines, *e.g.* under the Coal Mines Act, 1911, Part II (12 Halsbury's Statutes 97 *et seq.*).

*Regulations.*—Up to the time of going to press, no regulations under this section had been made.

For the general provisions applicable to regulations under the Act, see s. 64, *post*. Any regulations under the present section are to be laid before Parliament under s. 64 (3), *post*; but see note thereto. As to offences against regulations, see s. 61 (2), *post*.

*An Electricity Board.*—The term "Electricity Board" includes any of the following: the British Electricity Authority, any of the Area Boards and the North of Scotland Board (s. 1 (3), *ante*).

*Electric Lighting Act, 1882, s. 6.*—7 Halsbury's Statutes 689. This section directed that electricity undertakers should be subject to such regulations and conditions on specified subjects as might be inserted in any licence, order, or special Act affecting their undertaking.

*Vesting date.*—Such date on or after April 1, 1948, not being less than six months after the establishment of the British Electricity Authority nor less than three months after the establishment of all the Area Boards and the definition by order of their areas, as the Minister of Fuel and Power may by order appoint. April 1, 1948, has been so appointed (ss. 14 (1), *ante*, and 67 (1), *post*, and see the notes thereto).

*Repeal.*—The present section should be read in conjunction with the Interpretation Act, 1889, s. 38 (18 Halsbury's Statutes 1005); see s. 57, *ante*, and note thereto.

**61. Penalties.**—(1) If any person, in giving any information, making any claim or giving any notice for the purposes of any provision of this Act or of any regulation thereunder, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, he shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding one hundred pounds, or to both such imprisonment and such fine, or on conviction on indictment to imprisonment for a term not exceeding two years or to a fine not exceeding five hundred pounds, or to both such imprisonment and such fine. [598]

(2) Regulations made under any provision of this Act may provide that persons offending against the regulations shall be liable on summary conviction to a fine not exceeding one hundred pounds and, if the offence in respect of which he is so convicted is continued after the conviction, he shall be guilty of a further offence and liable in respect thereof on summary conviction to a fine not exceeding five pounds for each day on which the offence is so continued. [599]

*Penalties applicable under sub-s. (1).*—The penalties provided by this subsection are the same as the general penalties applicable under Regulation 92 of the Defence (General) Regulations, 1939 (39 Halsbury's Statutes 1069). As the maximum term of imprisonment on summary conviction does not exceed three months, the accused has no right to claim trial by jury under s. 17 of the Summary Jurisdiction Act, 1879 (11 Halsbury's Statutes 329).

*Five pounds for each day.*—This is a fine enforceable on summary conviction and differs from the "daily penalty not exceeding five pounds" provided for by s. 18 (5) of the Schedule to the Electric Lighting (Clauses) Act, 1899 (7 Halsbury's Statutes 720) which was the subject of the decision in *Chepstow Electric Light and Power Co. v. Chepstow Gas and Coke Consumers' Co.*, [1905] 1 K. B. 198.

For non-payment of a default fine of this kind, no matter how large, the maximum imprisonment permitted as an alternative would remain three months (Summary Jurisdiction Act, 1879, s. 5; 11 Halsbury's Statutes 324).

## 62. Provisions as to prosecutions and as to offences by corporations.—

(1) Proceedings for an offence under the last foregoing section or any regulation made under this Act shall not, in England and Wales, be instituted except by or with the consent of the Minister or by the Director of Public Prosecutions. [600]

(2) Where an offence under the last foregoing section or any regulation made under this Act has been committed by a body corporate, every person who at the time of the commission of the offence was a director, general manager, secretary or other similar officer of the body corporate, or was purporting to act in any such capacity, shall be deemed to be guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances. [601]

*The Minister.*—The Minister of Fuel and Power (s. 67 (1), *post*).

*Any regulation.*—*I.e.*, any regulation made by the Minister of Fuel and Power under this Act (s. 67 (1), *post*).

*Other similar officer.*—The term "officer," as defined in s. 67 (1), *post*, includes a servant, but the limiting words "other similar" must be taken to modify its meaning in the present connection; for the definitions in the interpretation section do not apply "where the context otherwise requires" (s. 67 (1), *post*).

*Sub-s. (2).*—Note that in the case of proceedings against officers in respect of offences by bodies corporate the usual common law presumption of innocence does not here apply. The burden of proof is shifted to the accused; in effect, it is for him to prove his innocence.

**63. Service of notices, etc.**—Any notice or other document required or authorised to be given, delivered or served under this Act or regulations or orders made thereunder or under any enactment applied by or incorporated with this Act may be given, delivered or served either—

- (a) by delivering it to the person to whom it is to be given or delivered or on whom it is to be served; or
- (b) by leaving it at the usual or last known place of abode of that person; or
- (c) by sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode; or
- (d) in the case of an incorporated company or body, or the arbitration tribunal, by delivering it to the secretary or clerk of the company, body or tribunal at their registered or principal office or sending it in a prepaid registered letter addressed to the secretary or clerk of the company, body or tribunal at that office; or
- (e) if it is not practicable after reasonable enquiry to ascertain the name or address of a person to whom it should be given or delivered, or on whom it should be served, as being a person having any interest in land, by addressing it to him by the description of the person having that interest in the premises (naming them) to which it relates, and delivering it to some person on the premises, or, if there is no person on the premises to whom it can be delivered, affixing it, or a copy of it, to some conspicuous part of the premises.

[602]

*Regulations or orders.*—For the general provisions applicable to regulations or orders under the Act, see s. 64, *infra*.

*Enactment.*—For the definition of this term, see s. 67 (1), *post*.

*Arbitration tribunal.*—The Electricity Arbitration Tribunal (s. 31 (1), *ante*).

**64. Provisions as to regulations and orders.**—(1) Any power conferred by this Act to make regulations or orders shall include power to provide by those regulations or orders for the determination of questions of fact or of law which may arise in giving effect to the regulations or orders and for regulating (otherwise than in relation to any court proceedings) any matters relating to the practice and procedure to be followed in connection with the determination of such questions, including provision as to the mode of proof

of any matters and provision as to parties and their representation and provision for the right to appear and be heard (as well in court proceedings as otherwise) of the Minister or other authorities, and as to awarding costs of proceedings for the determination of such questions, determining the amount thereof and the enforcement of awards thereof. [603]

(2) Any power conferred by this Act to prescribe by regulations or orders a period within which things are to be done shall include power to provide by those regulations or orders for extending the period so prescribed. [604]

(3) All orders and regulations made under this Act, not being orders or regulations required to be laid before Parliament in draft or orders subject to special parliamentary procedure, shall be laid before Parliament immediately after they are made and if either House, within a period of forty days beginning with the day on which any such order or regulations is or are so laid before it, resolves that the order or regulations be annulled, the order or regulations shall thereupon cease to have effect, but without prejudice to the validity of anything previously done thereunder or to the making of any new order or regulations. [605]

(4) In reckoning for the purposes of the last foregoing subsection any such period of forty days, no account shall be taken of any time during which Parliament is dissolved or prorogued, or during which both Houses are adjourned for more than four days. [606]

(5) Notwithstanding anything in subsection (4) of section one of the Rules Publication Act, 1893, orders and regulations made under this Act shall be deemed not to be, or to contain, statutory rules to which that section applies. [607]

(6) In the case of orders defining or varying the areas for which Area Boards are established under this Act, copies of the maps by reference to which those areas are defined by the orders shall be made available, during the period for which the orders or drafts thereof are laid before Parliament, for inspection by members of each House of Parliament. [608]

(7) Any order made under any such power may be revoked or varied by a subsequent order made in the like manner and subject to the like conditions. [609]

*Statutory safeguards.*—Much of the detailed provision needed to effect the objects of the Act Parliament has necessarily left to Ministers of the Crown, principally the Minister of Fuel and Power, empowering them to carry through the general principles of the Act by delegated legislation in the form of regulations and orders. In doing so, however, it has been careful to maintain a measure of control through the modern constitutional safeguard of parliamentary challenge.

This safeguard is applied to regulations and orders under the Act in three forms of varying stringency:

1. The requirement of special parliamentary procedure, as under ss. 50 and 57 (4), *ante*. This brings into play the Statutory Orders (Special Procedure) Act, 1945 (38 Halsbury's Statutes 441), under which orders stated to be subject to special parliamentary procedure are to be of no effect until laid before Parliament by the Minister responsible and brought into operation in accordance with the provisions of that Act, which seeks to combine the best features of provisional order procedure and affirmative resolution procedure (see *infra*). Within fourteen days after the order has been laid before Parliament petitions may be presented against it, being either "petitions for amendment" or "petitions of general objection." Special parliamentary procedure is usually applied to local matters to which it is specially suited.

2. The requirement that a draft be laid before Parliament and be approved by resolution of each House, as under ss. 4 (2) and 53, *ante*. This is the so-called "affirmative resolution procedure," in which case the regulation or order so subject is of no effect until the prescribed resolutions of Parliament have been passed. To this procedure ss. 4 to 7 of the Statutory Instruments Act, 1946 (see *infra*), has no application.

3. The requirement that orders shall be laid before Parliament immediately they are made and be subject to annulment by resolution, as generally applicable under the present section, *supra*. This is the so-called "negative resolution procedure," in which case the regulation or order so subject is effective from the time of its making and remains effective unless and until within the specified period a negative resolution is passed. The effect of the Statutory Instruments Act, 1946, on this type of procedure is noted below.

*The Minister.*—The Minister of Fuel and Power (s. 67 (1), *post*).

*Effect of the Statutory Instruments Act, 1946.*—39 Halsbury's Statutes 784. This Act came into full operation on January 1, 1948 (see S.I. 1948 No. 3). The effect of the Act is



that documents made on or after that date in exercise of certain statutory powers conferred by Acts passed before its commencement are "statutory instruments" (s. 1 (2)). Accordingly documents to which the negative resolution procedure applies (see *ante*) are required to be laid before Parliament in accordance with the provisions of s. 4 of that Act in substitution for the corresponding provisions of sub-ss. (3) and (4), *ante*, and the provisions of s. 5 of that Act for annulment in pursuance of resolution of either House of Parliament are substituted for the corresponding provisions of the present section.

*Rules Publication Act, 1893, s. 1.*—18 Halsbury's Statutes. Note that this Act was repealed by the Statutory Instruments Act, 1946, s. 12 (1) (39 Halsbury's Statutes 789), as from January 1, 1948, the date of commencement of the last-named Act (see S.I. 1948 No. 3).

*Orders defining or varying the areas.*—See s. 4 (2), *ante*.

**65. Expenses of the Minister.**—Any administrative expenses incurred by the Minister or any other Minister of the Crown or Government department under this Act shall be paid out of moneys provided by Parliament, and any sums received by the Minister or by any other Minister of the Crown or Government department under or by virtue of this Act shall be paid into the Exchequer. [610]

*Any administrative expenses.*—E.g., a proportion of the salaries of legal officers engaged in work in connection with the Act; printing costs; stationery; and expenses incurred in regard to the transfer of local authority undertakings (see H. of C. Official Report, S.C.E., May 15, 1947, col. 1047).

*The Minister.*—The Minister of Fuel and Power (s. 67 (1), *post*).

**66. Inquiries.**—(1) The Minister or the Secretary of State may cause an inquiry to be held in any case when he deems it advisable to do so in connection with any matter arising under this Act (including any enactment incorporated therewith) or the Electricity (Supply) Acts, 1882 to 1936, or the Act of 1943. [611]

(2) Subsections (2) to (5) of section two hundred and ninety of the Local Government Act, 1933, shall apply to any inquiry held by the Minister in England and Wales in pursuance of this section, and shall have effect as if the expression "department" included the Minister, and the provisions of the Sixth Schedule to the Act of 1943 shall apply to any inquiry held in Scotland, whether by the Minister or the Secretary of State, in pursuance of this section in like manner as those provisions apply to any inquiry held by the Secretary of State for the purposes of that Act:

Provided that no local authority shall be ordered to pay costs under subsection (4) of the said section two hundred and ninety in the case of any inquiry unless they are a party thereto. [612]

*Necessity for inquiries.*—At the Committee Stage of the Bill the Parliamentary Secretary to the Ministry of Fuel and Power told the Standing Committee of the House of Commons:

"As the clause stands the Minister has to judge whether an inquiry is necessary, but there is one important qualification to that: he may be bound by the existing law to hold an inquiry unless that existing law is amended or repealed in the Schedule to the Bill. As far as I am aware, the only case where we are repealing previous legislation which is relevant in this connection is the repeal of s. 32 (2) of the Schedule to the Electric Lighting (Clauses) Act, 1899. That, I may say, relates to the prices and charges which can be permitted. . . . In fact any inquiry not concerned with prices and methods of charge could still be imposed on the Minister by the existing legislation" (H. of C. Official Report, S.C.E., May 15, 1947, col. 1048).

For the Electric Lighting (Clauses) Act, 1899, Sched., s. 32 (2), as substituted by the Electricity (Supply) Act, 1922, s. 22 (2), and Sched., see 7 Halsbury's Statutes 727.

*The Minister.*—The Minister of Fuel and Power (s. 67 (1), *post*).

*Electricity (Supply) Acts, 1882 to 1936.*—See note to s. 50, *ante*.

*Local Government Act, 1933, s. 290 (2)–(5).*—26 Halsbury's Statutes 459. These subsections detail the provisions applicable to inquiries ordered to be held by a Government department under the Local Government Act, 1933. Under s. 290 (4) of that Act costs may be awarded against "such local authority or party to the inquiry as the department may direct," this provision being modified in its application to inquiries under the present Act by the proviso to sub-s. (2) of the present section.

*Definitions.*—For definitions of "enactment" and "local authority," see s. 67 (1), *infra*.

**67. Interpretation.**—(1) In this Act, except where the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—

"the Act of 1943" means the Hydro-Electric Development (Scotland) Act, 1943;



- “arbitration tribunal” means the tribunal established under section thirty-one of this Act ;
- “Area Board” has the meaning assigned to it by section one of this Act ;
- “authorised undertakers” means the bodies specified in the Second Schedule to this Act, and any reference in this Act to the capacity of a local authority or a composite company as authorised undertakers shall be construed as a reference to their capacity as a body authorised by any enactment to supply electricity in an area of supply ;
- “bulk supply” means a supply of electricity to be used for the purposes of distribution ;
- “Central Authority” has the meaning assigned to it by section one of this Act ;
- “company” means a company incorporated by any enactment and a company within the meaning of the Companies Act, 1929 ;
- “Electricity Board” has the meaning assigned to it by section one of this Act ;
- “electricity holding company” has the meaning assigned to it by section thirteen of this Act ;
- “electrical fittings” means electric lines, fittings, apparatus and appliances designed for use by consumers of electricity for lighting, heating, motive power and other purposes for which electricity can be used ;
- “electric line” has the same meaning as in the Electric Lighting Act, 1882 ;
- “electrical plant” means any plant, equipment, apparatus and appliances used for the purposes of generating, transmitting and distributing electricity, but not including any electrical fittings ;
- “emoluments” includes any allowances, privileges or benefits, whether obtaining legally or by customary practice ;
- “employed” means employed as an officer and “employment” shall be construed accordingly ;
- “enactment” means a public general Act, a local, private or personal Act, a provisional order confirmed by an Act, and any regulation or order made under any enactment, or any provision contained in any such Act, provisional order, regulation or order, and also includes any deed of transfer whereby statutory powers have been transferred to any authorised undertakers ;
- “financial year,”—

(a) in relation to the North of Scotland Board, means the financial year determined by the Secretary of State under section fifteen of the Act of 1943 ;

(b) in relation to any other Electricity Board, means a period of twelve months ending with a day to be prescribed, so however that the first financial year shall be the period beginning with the passing of this Act and ending with the first occurrence of the prescribed day, and, in case of any alteration of the prescribed day, the duration of the financial year as to which the alteration is first to have effect shall be shortened or extended as may be prescribed, by not more than six months, so as to end on the new prescribed day ; and

(c) in relation to any body to whom Part II of this Act applies, other than a local authority, means the period of twelve months for which the accounts of the body are normally made up ;

“functions” means duties and powers ;

- “generating station” has the same meaning as in the Electricity (Supply) Act, 1919 ;
- “holding company” shall be construed in accordance with the definition contained in the Companies Act, 1947 ;
- “joint board of local authorities” means a joint board constituted under section eight of the Electric Lighting Act, 1909, or by a local enactment ;
- “lease” includes an agreement for a lease and any tenancy agreement ;
- “loan”, in relation to a local authority, means a loan raised by the issue of securities or by a mortgage created under Part IX of the Local Government Act, 1933, or any similar enactment, and a loan advanced by the Public Works Loan Commissioners on the security of a mortgage ;
- “local authority” means the council of a county borough, county district or metropolitan borough, and the Common Council of the City of London, and includes, in section seven of this Act, the council of a county, and also includes in any other provision of this Act except the said section seven any joint board of local authorities having functions as authorised undertakers and also other functions ;
- “local enactment” means any enactment except a public general Act ;
- “main transmission lines” has the same meaning as in the Electricity (Supply) Act, 1919 ;
- “Minister” means the Minister of Fuel and Power ;
- “net revenue”, in relation to any body, means the revenue of that body, after deducting therefrom all charges which are proper to be made to revenue account, including, in particular, proper provision for the redemption of capital and proper provision for depreciation of assets or for renewal of assets, but not including provision for interest on debentures and debenture stock ;
- “North of Scotland Board” means the North of Scotland Hydro-Electric Board constituted under the Act of 1943 ;
- “North of Scotland District” means the area defined in the Second Schedule to the Act of 1943, subject to any order made under Part I of this Act varying that area ;
- “officer” includes a managing director and a director whose functions are substantially those of an employee but not any other director, and also includes a servant ;
- “pension”, in relation to any person, means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of him, and includes a gratuity so payable and a return of contributions to a pension fund, with or without interest thereon or any other addition thereto ;
- “pension fund” means a fund established for the purposes of paying pensions ;
- “pension rights” includes, in relation to any person, all forms of right to or eligibility for the present or future payment of a pension to or in respect of that person, and any expectation of the accruer of a pension to or in respect of that person under any customary practice and includes a right of allocation in respect of the present or future payment of a pension ;
- “pension scheme” includes any form of arrangements for the payment of pensions, whether subsisting by virtue of an Act, trust, contract or otherwise ;
- “power station company” has the meaning assigned to it by section thirteen of this Act ;

"prescribed" means prescribed by regulations;

"railway undertakers" means any body authorised by any enactment to carry goods and passengers by railway;

"regulations" means regulations made by the Minister;

"securities", in relation to a body corporate, means any shares, stock, debentures and debenture stock of the body corporate, and also includes any mortgages of the body which were quoted in the Stock Exchange Official Daily List (within the meaning of section twenty of this Act) on all six of the dates first mentioned in subsection (2) of that section, and "holder of securities", in relation to any body to whom Part II of this Act applies, means, except in the provisions relating to the appointment of the stockholders' representative, a person who, immediately before the vesting date, was the holder of securities of that body, or his successor in title;

"stockholders' representative" has the meaning assigned to it by section twenty-one of this Act;

"subsidiary company" shall be construed in accordance with the definition contained in the Companies Act, 1947;

"vesting date" has the meaning assigned to it by subsection (1) of section fourteen of this Act. [613]

(2) The definitions of "the Act of 1943", "electrical fittings", "the North of Scotland Board" and "the North of Scotland District" shall apply for the purposes of any amendment made by this Act in any other enactment. [614]

(3) References in this Act to any other enactment shall be construed as references to that enactment as amended by or under any other enactment, including this Act. [615]

"Company."—A company within the meaning of the Companies Act, 1929, is a company formed and registered under that Act or a company existing at the time of its commencement (see the Companies Act, 1929, s. 380 (1); 2 Halsbury's Statutes 1006).

"Electric line."—This term is defined by the Electric Lighting Act, 1882, s. 32 (7 Halsbury's Statutes 698), as meaning "a wire or wires, conductor, or other means used for the purpose of conveying, transmitting, or distributing electricity with any casing, coating, covering, tube, pipe, or insulator enclosing, surrounding, or supporting the same, or any part thereof, or any apparatus connected therewith for the purpose of conveying, transmitting or distributing electricity or electric currents."

"Generating station."—This term is defined by the Electricity (Supply) Act, 1919, s. 36 (7 Halsbury's Statutes 776).

"Holding company" and "subsidiary company."—For the definition of these terms, see the Companies Act, 1947 (10 & 11 Geo. 6, c. 47), s. 18.

*Electric Lighting Act, 1909, s. 8.*—7 Halsbury's Statutes 749.

*Local Government Act, 1933, Part IX.*—26 Halsbury's Statutes 412 *et seq.*

*Public Works Loan Commissioners.*—This body was constituted by the Public Works Loans Acts, 1875, s. 4 (12 Halsbury's Statutes 255).

"Main transmission lines."—This term is defined by the Electricity (Supply) Act, 1919, s. 36 (7 Halsbury's Statutes 776) as meaning "all extra high-pressure cables and overhead lines (not being an essential part of an authorised undertaker's distribution system or the distribution system of a railway company or the owners of a dock undertaking) transmitting electricity from a generation station to any other generating station, or to a sub-station, together with any step-up and step-down transformers and switch-gear necessary to, and used for, the control of such cables or overhead lines, and the buildings or such part thereof as may be required to accommodate such transformers and switch-gear."

"Vesting date."—By the Electricity (Vesting Date) Order, 1948, S.I. 1948 No. 217, dated February 6, 1948, the Minister, pursuant to his powers under s. 14, *ante*, appointed April 1, 1948, to be the vesting date for the purposes of the Act.

## 68. Application to Scotland. [616]

69. Short title and extent.—(1) This Act may be cited as the Electricity Act, 1947. [617]

(2) This Act shall not extend to Northern Ireland. [618]

## SCHEDULES

## Section 1

## FIRST SCHEDULE

## AREA ELECTRICITY BOARDS

<i>Name of Area Board</i>	<i>Description of Area</i>
The London Electricity Board.	The administrative County of London and parts of Essex, Kent, Middlesex and Surrey.
The South Eastern Electricity Board.	Parts of Kent, Middlesex, Surrey and Sussex.
The Southern Electricity Board.	Berkshire, Hampshire, the Isle of Wight, Wiltshire and parts of Buckinghamshire, Dorsetshire, Gloucestershire, Middlesex, Oxfordshire, Somersetshire, Surrey and Sussex.
The South Western Electricity Board.	Cornwall (including the Isles of Scilly), Devonshire and parts of Dorsetshire, Gloucestershire (including Bristol) and Somersetshire.
The Eastern Electricity Board.	Cambridgeshire, Hertfordshire, Huntingdonshire, the Isle of Ely, Norfolk, Suffolk and parts of Bedfordshire, Buckinghamshire, Essex, Middlesex, Oxfordshire and the Soke of Peterborough.
The East Midlands Electricity Board.	Leicestershire, Northamptonshire, Rutland and parts of Bedfordshire, Buckinghamshire, Derbyshire, Lincolnshire, Nottinghamshire, the Soke of Peterborough, Staffordshire and Warwickshire.
The Midlands Electricity Board.	Herefordshire, Worcestershire and parts of Gloucestershire, Oxfordshire, Shropshire, Staffordshire and Warwickshire (including Birmingham).
The South Wales Electricity Board.	Brecknockshire, Carmarthenshire, Glamorganshire, Monmouthshire, Pembrokeshire, Radnorshire and part of Cardiganshire.
The Merseyside & North Wales Electricity Board.	Anglesey, Caernarvonshire, Denbighshire, Flintshire, Merionethshire, Montgomeryshire and parts of Cardiganshire, Cheshire, Lancashire (including Liverpool) and Shropshire.
The Yorkshire Electricity Board.	Parts of Derbyshire, Lincolnshire, Nottinghamshire and of the East and West Ridings of Yorkshire.
The North Eastern Electricity Board.	Durham, Northumberland, the North Riding of Yorkshire and parts of the East and West Ridings of Yorkshire (including York).
The North Western Electricity Board.	Cumberland, Westmorland and parts of Cheshire, Derbyshire, Lancashire (including Manchester) and of the West Riding of Yorkshire.
The South East Scotland Electricity Board.	Berwickshire, Clackmannanshire, Fifeshire, Lothians, Peebles, Selkirkshire and parts of Dunbartonshire, Roxburghshire and Stirlingshire.
The South West Scotland Electricity Board.	Ayrshire, Dumfriesshire, Kirkcudbrightshire, Lanarkshire, Renfrewshire, Wigtownshire and parts of Dunbartonshire, Roxburghshire and Stirlingshire.

## Sections 13, 17

## SECOND SCHEDULE

## AUTHORISED UNDERTAKERS TO WHOM PART II OF ACT APPLIES

## PART I

## PUBLIC AND LOCAL AUTHORITIES AND COMPANIES (OTHER THAN COMPOSITE COMPANIES)

Aberayron and District Electricity Supply and Power Co. Ltd.  
Aberdare Urban District Council.  
Aberdeen Corporation.  
Abertillery Urban District Council.  
Aberystwyth Corporation.  
Accrington Corporation.  
Adwick-le-Street Urban District Council.  
Airdrie Corporation.  
Aldeburgh Electric Supply Co. Ltd.  
Alderley Edge & Wilmslow Electricity Board.  
Aldershot Corporation.  
Alton District Electricity Co. Ltd.  
Altrincham Electric Supply, Ltd.  
Amble Urban District Council.  
Ammanford Urban District Council.  
Ashbourne Urban District Council.  
Ashford Urban District Council.  
Ashton-in-Makerfield Urban District Council.  
Ashton-under-Lyne Corporation.  
Askrigg & Reeth Electric Supply Co. Ltd.  
Atherton Urban District Council.  
Aylesbury Corporation.  
Ayrshire Electricity Board.  
Bacup Corporation.  
Bangor Corporation.  
Barking Corporation.  
Barnes Corporation.  
Barnoldswick Urban District Council.  
Barnsley Corporation.  
Barnstaple Corporation.  
Barrow-in-Furness Corporation.  
Barry Corporation.  
Basingstoke Corporation.  
Bath Corporation.  
Batley Corporation.  
Battersea Borough Council.  
Beckenham Corporation.  
Bedford Corporation.  
Bedfordshire, Cambridgeshire & Huntingdonshire Electricity Co.  
Bedwas and Machen Urban District Council.  
Bedwelty Urban District Council.  
Bermondsey Borough Council.  
Bethesda Urban District Council.  
Bethnal Green Borough Council.  
Bexhill Corporation.  
Bexley Corporation.  
Bideford & District Electricity Supply Co. Ltd.  
Bingley Urban District Council.  
Birkenhead Corporation.  
Birmingham Corporation.  
Blackburn Corporation.  
Blackpool Corporation.  
Blandford Forum & District Electric Supply Co. Ltd.  
Bolsover Urban District Council.  
Bolton Corporation.

Borrowstounness Corporation.  
Borth & Ynyslas Electric Supply Co. Ltd.  
Boston & District Electric Supply Co. Ltd.  
Bournemouth Corporation.  
Bournemouth & Poole Electricity Supply Co. Ltd.  
Bradford Corporation.  
Bredbury and Romiley Urban District Council.  
Brentford & Chiswick Corporation.  
Brentford Electric Supply Co. Ltd.  
Brentwood District Electric Co. Ltd.  
Bridgend Urban District Council.  
Bridgewater & District Electric Supply & Traction Co. Ltd.  
Bridlington Corporation.  
Bridport Corporation.  
Brierfield Urban District Council.  
Brighouse Corporation.  
Brighton Corporation.  
Bristol Corporation.  
Bromley Corporation.  
Buckie Corporation.  
Buckrose Light & Power Co. Ltd.  
Bude Electric Supply Co. Ltd.  
Burford Electric Light & Power Co. Ltd.  
Burgess Hill Electricity Ltd.  
Burnham & District Electric Supply Co. Ltd.  
Burnley Corporation.  
Burton-upon-Trent Corporation.  
Bury Corporation.  
Buxton Corporation.  
•Caernarvon Corporation.  
Caerphilly Urban District Council.  
Calne Corporation.  
Cambridge Electric Supply Co. Ltd.  
Campbeltown and Mid-Argyll Electric Supply Co. Ltd.  
Cannock Urban District Council.  
Canterbury Corporation.  
Cardiff Corporation.  
Cardiff Rural District Council.  
Cark & District Electricity Co. Ltd.  
Carlisle Corporation.  
Carmarthen Electric Supply Co. Ltd.  
Castleford Urban District Council.  
Central Electricity Board.  
Central London Electricity Ltd.  
Central Sussex Electricity Ltd.  
Chasetown & District Electricity Co. Ltd.  
Cheadle & Gatley Urban District Council.  
Cheltenham Corporation.  
Chepstow Electric Lighting & Power Co. Ltd.  
Chesham Electric Light & Power Co. Ltd.  
Chester Corporation.  
Chesterfield Corporation.  
Chichester Corporation.  
Chislehurst Electric Supply Co. Ltd.  
Chudleigh Electric Light & Power Co. Ltd.  
City of London Electric Lighting Co. Ltd.  
Clacton Urban District Council.  
Cleethorpes Corporation.  
Clitheroe Corporation.  
Clyde Valley Electrical Power Co.  
Coatbridge Corporation.  
Colchester Corporation.  
Colne Corporation.

Colne Valley Electric Supply Co. Ltd.  
Colne Valley Urban District Council.  
Colwyn Bay Corporation.  
Congleton Corporation.  
Connah's Quay Urban District Council.  
Conway Corporation.  
Cornwall Electric Power Co.  
County of London Electric Supply Co. Ltd.  
Coventry Corporation.  
Craven Hydro-Electric Supply Co. Ltd.  
Crewe Corporation.  
Crieff Electric Supply Co. Ltd.  
Crook and Willingdon Urban District Council.  
Croydon Corporation.  
Culm Valley Electric Supply Co. Ltd.  
Cwmbran Urban District Council.  
Darlington Corporation.  
Dartford Corporation.  
Darwen Corporation.  
Dawlish Electric Light & Power Co. Ltd.  
Dearne District Electricity Board.  
Denny & Dunipace Corporation.  
Derby Corporation.  
Derbyshire & Nottinghamshire Electric Power Co.  
Dewsbury Corporation.  
Dolgelly Urban District Council.  
Doncaster Corporation.  
Dorchester Corporation.  
Dover Corporation.  
Dumbarton Corporation.  
Dumfries Corporation.  
Dumfriesshire County Council.  
Dumbartonshire County Council.  
Dundee Corporation.  
Dunoon & District Electricity Supply Co. Ltd.  
Ealing Corporation.  
Earby Urban District Council.  
East Anglian Electric Supply Co. Ltd.  
East Dereham Urban District Council.  
East Devon Electricity Co. Ltd.  
East Grinstead Urban District Council.  
East Ham Corporation.  
East Retford Corporation.  
East Suffolk Electricity Distribution Co. Ltd.  
Eastbourne Corporation.  
Ebbw Vale Urban District Council.  
Eccles Corporation.  
Edinburgh Corporation.  
Egham & Staines Electricity Co. Ltd.  
Electric Supply Corporation, Ltd.  
Electrical Distribution of Yorkshire, Ltd.  
Electricity Distribution of North Wales & District, Ltd.  
Elland Urban District Council.  
Epsom & Ewell Corporation.  
Erith Corporation.  
Eston Urban District Council.  
Exe Valley Electricity Co. Ltd.  
Exeter Corporation.  
Falkirk Corporation.  
Fareham Urban District Council.  
Farnworth Corporation.  
Faversham Corporation.  
Felixstowe Urban District Council.



Fife Electric Power Co.  
Finchley Corporation.  
First Garden City, Ltd.  
Fleetwood Corporation.  
Folkestone Electricity Supply Co. Ltd.  
Foots Cray Electricity Supply Co. Ltd.  
Formby Urban District Council.  
Fort William Corporation.  
Frinton-on-Sea & District Electric Light & Power Co. Ltd.  
Fulham Borough Council.  
Gainsborough Urban District Council.  
Galloway Water Power Co.  
Gellygaer Urban District Council.  
Gillingham Corporation.  
Glasgow Corporation.  
Gloucester Corporation.  
Gorseinon Electric Light Co. Ltd.  
Grampian Electricity Supply Co.  
Grange Urban District Council.  
Gravesend Corporation.  
Great Yarmouth Corporation.  
Greenock Corporation.  
Grimsby Corporation.  
Guildford Corporation.  
Guisborough Urban District Council.  
Hackney Borough Council.  
Halifax Corporation.  
Hamilton Corporation.  
Hammersmith Borough Council.  
Hampstead Borough Council.  
Harrogate Corporation.  
Harwich Corporation.  
Haslingden Corporation.  
Hastings Corporation.  
Hawarden Rural District Council.  
Hawes Electric Lighting Co. Ltd.  
Hazel Grove & Bramhall Urban District Council.  
Hebden Royd Urban District Council.  
Heckmondwike Urban District Council.  
Helensburgh Corporation.  
Herne Bay & District Electricity Supply Co. Ltd.  
Hertford Corporation.  
Heston & Isleworth Corporation.  
Heywood Corporation.  
High Wycombe Corporation.  
Hindley Urban District Council.  
Hitchin Urban District Council.  
Holmfirth Urban District Council.  
Holsworthy Electric Supply Co. Ltd.  
Holyhead Urban District Council.  
Horley & District Electricity Supply Co. Ltd.  
Hornsey Corporation.  
Horsham Urban District Council.  
Horwich Urban District Council.  
Hove Corporation.  
Hoylake Urban District Council.  
Huddersfield Corporation.  
Ilford Corporation.  
Ilfracombe Electric Light & Power Co. Ltd.  
Ilkley Urban District Council.  
Inverness Corporation.  
Ipswich Corporation.  
Isle of Wight Electric Light & Power Co. Ltd.

Islington Borough Council.  
Keighley Corporation.  
Kendal Corporation.  
Kent Electric Power Co.  
Keswick Electric Light Co. Ltd.  
Kettering Corporation.  
King's Lynn Corporation.  
Kingston-upon-Hull Corporation.  
Kingston-upon-Thames Corporation.  
Kirkcaldy Corporation.  
Kirkcudbright County Council.  
Lanarkshire County Council.  
Lanarkshire Hydro-Electric Power Co.  
Lancashire Electric Power Co.  
Lancaster Corporation.  
Leeds Corporation.  
Leek Urban District Council.  
Leicester Corporation.  
Leicestershire & Warwickshire Electric Power Co.  
Leigh Corporation.  
Lerwick Corporation.  
Lewes & District Electric Supply Co. Ltd.  
Leyton Corporation.  
Lichfield Corporation.  
Lincoln Corporation.  
Littleborough Urban District Council.  
Liverpool Corporation.  
Llandrindod Wells Urban District Council.  
Llandudno Urban District Council.  
Llanelli & District Electric Supply Co. Ltd.  
Llanfairfechan Urban District Council.  
Llangollen Urban District Council.  
Loch Leven Electricity Supply Co. Ltd.  
London & Home Counties Joint Electricity Authority.  
London Electric Supply Corporation Ltd.  
London Power Co. Ltd.  
Long Eaton Urban District Council.  
Lossiemouth and Brandenburgh Corporation.  
Lothians Electric Power Co.  
Loughborough Corporation.  
Louth Corporation.  
Lowestoft Corporation.  
Luton Corporation.  
Lyme Regis Corporation.  
Lynton & Lynmouth Electric Light Co. Ltd.  
Lytham St. Anne's Corporation.  
Macclesfield Corporation.  
Machynlleth Electric Supply Co. Ltd.  
Maesteg Urban District Council.  
Maidenhead Corporation.  
Maidstone Corporation.  
Malvern Urban District Council.  
Manchester Corporation.  
Mansfield Corporation.  
Margate, Broadstairs & District Electricity Board.  
Market Drayton Electric Light & Power Co. Ltd.  
Marlborough Corporation.  
Marple Urban District Council.  
Melton Mowbray Electric Light Co. Ltd.  
Menai Bridge Urban District Council.  
Mersey Power Co. Ltd.  
Merthyr Electric Traction & Lighting Co. Ltd.  
Metropolitan Electric Supply Co. Ltd.

Mexborough Urban District Council.  
Mid-Cheshire Electricity Supply Co. Ltd.  
Mid-Cumberland Electricity Co. Ltd.  
Mid-Lincolnshire Electric Supply Co. Ltd.  
Mid-Somerset Electric Supply Co. Ltd.  
Middlesbrough Corporation.  
Middleton Corporation.  
Midland Electric Corporation for Power Distribution Ltd.  
Midland Electric Light & Power Co. Ltd.  
Milford-on-Sea Electric Supply Co. Ltd.  
Milford Haven Urban District Council.  
Millom Rural District Council.  
Milnrow Urban District Council.  
Milton & Barton-on-Sea (Hants) Electricity Supply Co. Ltd.  
Minehead Electric Supply Co. Ltd.  
Mirfield Urban District Council.  
Mold Urban District Council.  
Monmouth Electricity Co. Ltd.  
Morecambe & Heysham Corporation.  
Morley Corporation.  
Motherwell & Wishaw Corporation.  
Mountain Ash Urban District Council.  
Musselburgh & District Electric Light & Traction Co. Ltd.  
Mynyddislwyn Urban District Council.  
Neath Corporation.  
Neath Rural District Council.  
Nelson Corporation.  
New Mills Urban District Council.  
Newark Corporation.  
Newcastle & District Electric Lighting Co. Ltd.  
Newcastle-under-Lyme Corporation.  
Newcastle-upon-Tyne Corporation.  
Newmarket Electric Light Co. Ltd.  
Newport Corporation (Mon.).  
Newton-le-Willows Urban District Council.  
Normanton Urban District Council.  
North Berwick Corporation.  
North-Eastern Electric Supply Co. Ltd.  
North Lincolnshire & Howdenshire Electricity Co. Ltd.  
North of Scotland Electric Light & Power Co. Ltd.  
North Somerset Electric Supply Co. Ltd.  
North Wales and South Cheshire Joint Electricity Authority.  
North Wales Power Co. Ltd.  
North West Midlands Joint Electricity Authority.  
Northampton Electric Light & Power Co. Ltd.  
Northmet Power Co.  
Northwood Electric Light & Power Co. Ltd.  
Norwich Corporation.  
Notting Hill Electric Lighting Co. Ltd.  
Nottingham Corporation.  
Nuneaton Corporation.  
Oban Corporation.  
Ogmore & Garw Urban District Council.  
Oldham Corporation.  
Ormskirk Electric Supply Co. Ltd.  
Ossett Corporation.  
Oswestry Corporation.  
Oxford Corporation.  
Padiham Urban District Council.  
Paignton Electric Light & Power Co. Ltd.  
Paisley Corporation.  
Peacehaven Electric Light & Power Co. Ltd.  
Penarth Urban District Council.

Penmaenmawr Urban District Council.  
Penrith Electric Supply Co. Ltd.  
Penybont Rural District Council.  
Perth Corporation.  
Peterborough Corporation.  
Peterhead Electricity Co. Ltd.  
Petersfield Electric Light & Power Co. Ltd.  
Plymouth Corporation.  
Plympton St. Mary Rural District Council.  
Pontardawe Rural District Council.  
Pontypool Electric Light & Power Co. Ltd.  
Pontypridd Urban District Council.  
Poplar Borough Council.  
Port Talbot Corporation.  
Porthcawl Electricity Co. Ltd.  
Portland Urban District Council.  
Portsmouth Corporation.  
Prestatyn Urban District Council.  
Preston Corporation.  
Pudsey Corporation.  
Radcliffe Corporation.  
Ramsgate & District Electric Supply Co. Ltd.  
Rawtenstall Corporation.  
Reading Corporation.  
Redcar Corporation.  
Reigate Corporation.  
Rhondda Urban District Council.  
Rhyl Urban District Council.  
Richmond (Surrey) Electric Light & Power Co. Ltd.  
Richmond (Yorks) Corporation.  
Ringmer & District Electricity Co. Ltd.  
Ringwood Electric Supply Co. Ltd.  
Risca Urban District Council.  
Rochdale Corporation.  
Rotherham Corporation.  
Rugby Corporation.  
Rushden & District Electric Supply Co. Ltd.  
Ruthin Corporation.  
St. Austell & District Electric Lighting & Power Co. Ltd.  
St. Helens Corporation.  
St. Marylebone Borough Council.  
St. Pancras Borough Council.  
Sale Corporation.  
Salford Corporation.  
Salisbury Electric Light & Supply Co. Ltd.  
Scarborough Corporation.  
Scottish Central Electric Power Co.  
Scottish Midlands Electricity Supply Ltd.  
Scottish Southern Electric Supply Co. Ltd.  
Scunthorpe Corporation.  
Seaford & Newhaven Electricity Ltd.  
Seaham Urban District Council.  
Seaton and District Electric Light Co. Ltd.  
Sedbergh Electricity Supply Co. Ltd.  
Settle and District Electricity Co. Ltd.  
Sevenoaks & District Electricity Co. Ltd.  
Sheerness & District Electric Supply Co. Ltd.  
Sheffield Corporation.  
Shipley Urban District Council.  
Shoreditch Borough Council.  
Shoreham & District Electric Lighting & Power Co. Ltd.  
Shropshire, Worcestershire & Staffordshire Electric Power Co.  
Skelmorlie Electric Supply Co. Ltd.

Skelton and Brotton Urban District Council.  
Skipton Urban District Council.  
Sleaford Urban District Council.  
Slough & Datchet Electricity Supply Co. Ltd.  
South Cumberland Electricity Supply Co. Ltd.  
South-East Kent Electric Power Co. Ltd.  
South-East Yorkshire Light & Power Co. Ltd.  
South London Electric Supply Corporation, Ltd.  
South Metropolitan Electric Light & Power Co. Ltd.  
South Shields Corporation.  
South Somerset & District Electricity Co. Ltd.  
South Wales Electric Power Co..  
Southampton Corporation.  
Southend-on-Sea Corporation.  
Southport Corporation.  
Southwark Borough Council.  
Spalding Urban District Council.  
Spenborough Urban District Council.  
Stafford Corporation.  
Stalybridge, Hyde, Mossley & Dukinfield Transport & Electricity Board.  
Stanley Urban District Council.  
Stepney Borough Council.  
Steyping Electricity Ltd.  
Stirling Corporation.  
Stockport Corporation.  
Stockton-on-Tees Corporation.  
Stoke Newington Borough Council.  
Stoke-on-Trent Corporation.  
Stone Urban District Council.  
Stornoway Electric Supply Co. Ltd.  
Strathelyde Electricity Supply Co. Ltd.  
Stretford & District Electricity Board.  
Stroud Electric Supply Co. Ltd.  
Sunderland Corporation.  
Sussex Electricity Supply Co. Ltd.  
Sutton Coldfield Corporation.  
Swansea Corporation.  
Swindon Corporation.  
Swinton & Pendlebury Corporation.  
Tadcaster Electricity Co. Ltd.  
Tamworth District Electric Supply Co. Ltd.  
Taunton Corporation.  
Teignmouth Electric Lighting Co. Ltd.  
Thornbury & District Electricity Co. Ltd.  
Thornton Cleveleys Urban District Council.  
Thurrock Urban District Council.  
Thurso & District Electric Supply Co. Ltd.  
Tiverton Corporation.  
Todmorden Corporation.  
Tonbridge Urban District Council.  
Torquay Corporation.  
Towyn, Aberdovey and District Electricity Co. Ltd.  
Tredegar Urban District Council.  
Trent Valley & High Peak Electricity Co. Ltd.  
Tunbridge Wells Corporation.  
Turton Urban District Council.  
Tynemouth Corporation.  
Ulverston Urban District Council.  
Urban Electric Supply Co. Ltd.  
Uttoxeter Urban District Council.  
Uxbridge & District Electric Supply Co. Ltd.  
Wakefield Corporation.  
Wallasey Corporation.

Walsall Corporation.  
 Walthamstow Corporation.  
 Walton and Weybridge Urban District Council.  
 Warmley Rural District Council.  
 Warrington Corporation.  
 Watford Corporation.  
 Weald Electricity Supply Co. Ltd.  
 Wellingborough Electric Supply Co. Ltd.  
 Wellington District Electricity Co. Ltd.  
 Welwyn Garden City Electricity Supply Co. Ltd.  
 Wessex Electricity Co.  
 West Bromwich Corporation.  
 West Cambrian Power Co. Ltd.  
 West Devon Electric Supply Co. Ltd.  
 West Gloucestershire Power Co. Ltd.  
 West Ham Corporation.  
 West Hampshire Electricity Co. Ltd.  
 West Hartlepool Corporation.  
 West Kent Electric Co. Ltd.  
 West Lothian County Council.  
 West Midlands Joint Electricity Authority.  
 West Riding Automobile Co. Ltd.  
 Westmorland & District Electricity Supply Co. Ltd.  
 Weston-super-Mare & District Electric Supply Co. Ltd.  
 Weymouth and Melcombe Regis Corporation.  
 Whitby Urban District Council.  
 Whitehaven Corporation.  
 Whitstable Electric Co. Ltd.  
 Whitworth Urban District Council.  
 Wick Corporation.  
 Wickford & District Electricity Supply Co. Ltd.  
 Wigan Corporation.  
 Wigtownshire Electricity Co. Ltd.  
 Willesden Corporation.  
 Wilton Electricity Supply Co. Ltd.  
 Wimbledon Corporation.  
 Winchester Corporation.  
 Windermere & District Electricity Supply Co. Ltd.  
 Windsor Electrical Installation Co. Ltd.  
 Wisbech Electric Light & Power Co. Ltd.  
 Witney Urban District Council.  
 Woking Electric Supply Co. Ltd.  
 Wolverhampton Corporation.  
 Woodstock & District Electrical Distribution Co. Ltd.  
 Woolwich Borough Council.  
 Worcester Corporation.  
 Workington Corporation.  
 Worksop Corporation.  
 Worthing Corporation.  
 Wrexham Corporation.  
 Yale Electric Power Co. Ltd.  
 York Corporation.  
 Yorkshire Electric Power Co. [620]

## PART II

### COMPOSITE COMPANIES

Ascot District Gas & Electricity Co.  
 Bognor & District Gas & Electricity Co.  
 Brixham Gas & Electricity Co.  
 Bungay Gas & Electricity Co.  
 Farnham Gas & Electricity Co.  
 Guildford Gas Light & Coke Co.

Mid Southern Utility Co.  
 Oakham Gas & Electricity Co. Ltd.  
 Salcombe Gas & Electricity Co. Ltd.  
 Whitchurch (Hants) Gas & Electricity Co. Ltd.  
 Uckfield Gas & Electricity Co.  
 Yorktown (Camberley) Gas & Electricity Co. [621]

Sections 20, 40

### THIRD SCHEDULE

#### ISSUE OF BRITISH ELECTRICITY STOCK IN SATISFACTION OF COMPENSATION

##### PART I

##### *Provisions applicable to securities with values determined before the vesting date*

1. This part of this Schedule shall apply to securities in respect of which compensation is payable under Part II of this Act and the values of which are declared by order of the Minister to have been determined under the said Part II before the vesting date.

2. The holders of any securities to which this Part of this Schedule applies shall, by virtue of this Act, become instead on the vesting date the holders of the amount of British Electricity Stock to which they are entitled, and all securities to which this Part of this Schedule applies shall, by virtue of this Act, be extinguished on the vesting date.

3. The interest on the said stock shall begin to accrue as from the vesting date.

4. The regulations to be made under Part III of this Act by the Minister with the approval of the Treasury for prescribing the terms on which and the provisions in accordance with which British Electricity Stock is to be issued, transferred, dealt with and redeemed, shall include provisions whereby any stock or share certificate or other similar document in force immediately before the vesting date in relation to any securities to which this Part of this Schedule applies shall be treated as applicable to any British Electricity Stock created and issued by way of compensation in respect of those securities until the corresponding document is issued with respect to that stock.

5. Where the holder of any securities becomes, under this Part of this Schedule, instead the holder of British Electricity Stock, he shall hold that stock in the same right and on the same trusts and subject to the same powers, privileges, charges, restraints and liabilities as those in, on or subject to which he held those securities, and any provision of any deed, will, disposition or other instrument, and any statutory provision as to what is to be done by the holder of the securities or the redemption moneys thereof, shall, with any necessary modifications, have effect in relation to the said stock as it would have had effect in relation to the securities if they had not been extinguished :

Provided that—

(a) any beneficial interest of any body to whom Part II of this Act applies in any of the said securities shall be treated as having passed to the Central Authority and the foregoing provisions of this paragraph shall have effect accordingly ;

(b) nothing in this paragraph shall limit the powers of the Minister under Part III of this Act as respects the making, with the approval of the Treasury, of regulations in relation to British Electricity Stock.

6. Nothing in this Part of this Schedule affects the making of any payment or distribution by a stockholders' representative, in accordance with the provisions of Part II of this Act relating to the final payment of dividends and interest, to the holders of securities of any body to whom the said Part II applies. [622]

##### PART II

##### *Provisions applicable to other securities*

1.—(1) The provisions of this Part of this Schedule shall apply to such of the securities in respect of which compensation is payable under Part II of this Act as are not securities to which Part I of this Schedule applies.



(2) In this Part of this Schedule, the expression "the conversion date" means, in relation to any securities, such date as may be specified in relation thereto by order of the Minister, being a date as soon as conveniently may be after the compensation payable in respect of those securities has been determined.

2. During the period beginning with the vesting date and ending immediately before the conversion date, the securities to which this Part of this Schedule applies shall, notwithstanding the dissolution of the bodies to whom Part II of this Act applies, continue to exist and may be transferred, and the Central Authority shall keep the registers or other records of the holders of those securities, but the only rights which shall attach to those securities shall be—

- (a) the right to have instead British Electricity Stock which attaches to the securities by virtue of the next following paragraph; and
- (b) the right to the payment of interest which attaches to the securities under paragraph 5 of this Part of this Schedule;

and all other rights attaching to the securities shall, by virtue of this Act, be extinguished on the vesting date.

3. The holders of any securities to which this Part of this Schedule applies shall, by virtue of this Act, become instead on the conversion date the holders of the amount of British Electricity Stock to which they are entitled, and all securities to which this Part of this Schedule applies shall, by virtue of this Act, be extinguished on the conversion date.

4. Interest on the said stock shall begin to accrue as from the vesting date.

5.—(1) The Central Authority shall, on such dates as the Minister may direct, make to the persons who are, at such times as may be specified in the direction, holders of any securities to which this Part of this Schedule applies, payments of interest not exceeding the amount which, in the opinion of the Central Authority, will be found to have accrued on the British Electricity Stock ultimately issued under paragraph 3 of this Part of this Schedule in satisfaction of compensation payable in respect of those securities.

(2) If the amounts paid by the Central Authority under this paragraph in respect of any securities are equal to or greater than the amount of interest which is found to have accrued, for the period beginning with the vesting date and ending immediately before the conversion date, on the British Electricity Stock created and issued as aforesaid in satisfaction of compensation payable in respect of those securities, the interest so found to have accrued shall be treated as discharged.

(3) If the amount paid as aforesaid in respect of any securities is less than the amount found to have accrued as aforesaid on the British Electricity Stock created and issued as aforesaid in satisfaction of compensation payable in respect of those securities, the amount so found to have accrued shall be treated as discharged to the extent of the amount so paid and the balance shall be added to and treated as part of the interest (being interest accruing on and after the conversion date), which first falls to be paid after the conversion date on that stock.

(4) Any amount payable under sub-paragraph (1) of this paragraph which has not been paid by reason that it has not been possible to discover the person entitled thereto or that the title thereto has not been established or that a cheque or warrant issued for the purpose of making payment thereof has not been encashed shall, for the purposes of sub-paragraphs (2) and (3) of this paragraph (but not for any other purposes) be treated as paid.

6. Paragraphs 4, 5 and 6 of Part I of this Schedule shall apply for the purpose of this Schedule as if—

- (a) any reference therein to that Part of this Schedule were a reference to this Part of this Schedule; and
- (b) the reference in the said paragraph 4 to the vesting date were a reference to the conversion date. [623]

*Bank Plan.*—The scheme of this Schedule, known as the Bank Plan, was explained by the Financial Secretary to the Treasury in Standing Committee of the House of Commons in these terms:

"The transfer, the registration and the issue of new stock will place a very considerable strain on the Bank of England staff and it may take some time to accomplish. In order to assist all concerned, particularly stockholders, it has been arranged . . . that the stock in the hands of holders will be notionally considered to be the new British Electricity Authority Stock at the value at which the stock is going to be given on the vesting date, and that will mean that holders who desire to sell their stock can sell it freely. The certificate will pass, and, as it comes into the name of the new holder, the new British Electricity Authority Stock

will be issued. I hesitate to prophesy how long the plan and the full work of transferring the new stock will take, but quite obviously it may take twelve months or even eighteen months. This is a device to assist the individuals so that they will be able, if they are so minded, to buy and sell this stock, notwithstanding the fact that at the moment when they are selling it or buying it the new stock has not been issued to them" (see H. of C. Official Report, S.C.E., April 2, 1947, col. 558).

*Securities*.—For definition of this term, see s. 67 (1), *ante*.

*Vesting date*.—Such date on or after April 1, 1948, not being less than six months after the establishment of the British Electricity Authority nor less than three months after the establishment of all the Area Boards and the definition by order of their areas, as the Minister of Fuel and Power may by order appoint. April 1, 1948, has been so appointed (ss. 14 (1) and 67 (1), *ante*, and see the notes thereto).

*British Electricity Stock*.—See s. 20 (1), *ante*.

*Central Authority*.—The British Electricity Authority (s. 1 (3), *ante*).

*Stockholders' representative*.—See s. 21, *ante*.

## Section 57

## FOURTH SCHEDULE

### ADAPTATIONS AND MODIFICATIONS OF ENACTMENTS

#### PART I

#### ENACTMENTS OTHER THAN THE ELECTRIC LIGHTING (CLAUSES) ACT, 1899, AND THE HYDRO-ELECTRIC DEVELOPMENT (SCOTLAND) ACT, 1943

##### *General Adaptations*

Subject to any specific adaptation or modification made by this Schedule, references in any of the provisions of the Electricity (Supply) Acts, 1882 to 1936, or any other enactment (except the Electric Lighting (Clauses) Act, 1899, the Act of 1943, or any local enactment)—

- (a) to any body or person authorised by any enactment or licence to supply electricity in any area (whatever expression may be used to describe such a body or person);
- (b) to the undertaking of any such body or person; and
- (c) to any enactment or licence authorising such supply (whatever expression may be used);

shall be construed as referring only to an Electricity Board, to the business carried on by any such Board, and to any local enactment applicable to any such Board, respectively.

References in any of the provisions of the Electricity (Supply) Acts, 1882 to 1936, to those Acts, and any reference therein to one or more of those Acts, being a reference which, by virtue of the construction of those Acts as one, is to be construed as a reference to all the said Acts, shall be construed as including a reference to this Act and, as regards the North of Scotland Board, to the Act of 1943.

In their application to the North of Scotland District, the Electricity (Supply) Acts, 1882 to 1936, shall have effect with the additional modification that there shall be substituted (except in section four of the Electric Lighting Act, 1888, sections one to four, twenty-nine and thirty-nine of the Electricity (Supply) Act, 1919, and the Electricity Supply (Meters) Act, 1936) for references to the Minister or the Electricity Commissioners, references to the Secretary of State.

##### *Specific Adaptations and Modifications*

<i>Enactment</i>	<i>Adaptation of Modification</i>
Electric Lighting Act, 1882 (45 & 46 Vict. c. 56)	
s. 12 .. ..	For the words from "For the purposes of this Act" to "under this Act" there shall be substituted—

"For the purposes of this Act, in the construction of all the enactments incorporated by this section the 'promoters' or 'undertakers' means an Electricity Board and 'the undertaking' means the business carried on by such a Board, and 'the special

*Enactment*

Electric Lighting Act, 1882  
(45 & 46 Vict. c. 56)—*cont.*  
s. 12—*cont.*

*Adaptation or Modification*

Act' means the Electricity (Supply) Acts, 1882 to 1936 (including, as regards the North of Scotland Board, the Act of 1943), the Electricity Act, 1947, and any local enactment (within the meaning of the last named Act) applicable to any such Board";

and for the words "the area within which the undertakers are authorised to supply electricity under any licence, order or special Act" there shall be substituted the words "in relation to the Central Authority, the whole of Great Britain except the North of Scotland District, in relation to any Area Board, the area for which that Board is for the time being established and, in relation to the North of Scotland Board, the North of Scotland District".

- |       |    |    |    |   |
|-------|----|----|----|---|
| s. 13 | .. | .. | .. | For the words "the undertakers" there shall be substituted the words "the North of Scotland Board or any Area Board", and the words "insert any such special powers in any licence or provisional order, or" shall be omitted.  |
| s. 14 | .. | .. | .. | The section shall not apply to main transmission lines the construction of which is authorised by a scheme under the Act of 1943.   |
| s. 15 | .. | .. | .. | The words "and to any bye-laws made under this Act" shall be omitted.   |
| s. 16 | .. | .. | .. | For the words "the undertakers", in the first three places where they occur, there shall be substituted the words "an Electricity Board or any undertakers whose undertaking has been transferred to any such Board".   |
| s. 18 | .. | .. | .. | For the words "lamp or burner", wherever they occur throughout the section, there shall be substituted the words "electrical fittings".   |
| s. 31 | .. | .. | .. | For this section the following section shall be substituted :—<br>"31. In this Act, unless the context otherwise requires, the expression 'local authority' means—<br>(a) in England and Wales the council of a county borough, county district or metropolitan borough and the Common Council of the City of London; and<br>(b) in Scotland a county or town council." |
| s. 36 | .. | .. | .. | The definition of the expression "public purposes" shall be omitted.  |

Electric Lighting Act, 1909  
(9 Edw. 7, c. 34)

- |      |    |    |    |  |
|------|----|----|----|--|
| s. 2 | .. | .. | .. | For the words "any undertakers" there shall be substituted the words "the Central Authority"; after the words "the Board of Trade" there shall be inserted the words "(which consent may be subject to such conditions as the Minister may impose)"; after the word "construct" there shall be inserted the words "or extend", the words from "acquired by them" to the words "special Act or Provisional Order" shall be omitted; after the word "constructed" there shall be inserted the words "or extended"; |
|------|----|----|----|--|

*Enactment**Adaptation or Modification*

Electric Lighting Act, 1909  
(9 Edw. 7 c. 84)—*cont.*  
s. 2—*cont.*

at the end of the first paragraph of the section there shall be inserted the words "and, in the case of an extension of any generating station, the Minister may, if the extension appears to him to be of a minor character, dispense with the giving of a notice and of an opportunity for stating objections as aforesaid"; and the second paragraph of the section shall be omitted.

- s. 23     ..     ..     ..     For the words from the beginning of the section to "in terms of the Electric Lighting Acts" there shall be substituted the words "It shall not be lawful for any local authority, company or person, other than an Electricity Board, to commence to supply or distribute electricity."
- s. 25     ..     ..     ..     The definition of the expressions "Provisional Order", "authorised", "area of supply", "undertakers", "generating station", and "to supply electricity in bulk" shall be omitted.
- s. 26     ..     ..     ..     Subsection (1) shall be omitted.

Electricity (Supply) Act, 1919  
(9 & 10 Geo. 5, c. 100)—

- s. 10     ..     ..     ..     The words "a joint electricity authority or" shall be omitted.
- s. 11     ..     ..     ..     After the word "person", where it first occurs, there shall be inserted the words "other than the Central Authority or the North of Scotland Board", the words "or main transmission line" shall be omitted, the words "a joint electricity authority or" shall be omitted, and the words from "Provided also" to the end of the section shall be omitted.
- s. 15     ..     ..     ..     In subsection (1) the words "on the representation of the Electricity Commissioners" and "any joint electricity authority or" and "joint electricity authority or" shall be omitted, and in proviso (a) to that subsection for the words "a special order" there shall be substituted the words "subject to special parliamentary procedure"; and subsections (2), (3) and (4) shall be omitted.
- s. 21     ..     ..     ..     After the word "consent" in the first and third places where it occurs, the words "or authorisation" shall be inserted, and after the word "to" in the first place where it occurs there shall be inserted the words "or for".
- s. 22     ..     ..     ..     The words "A joint electricity authority or" and the words "joint electricity authority or", wherever they occur, shall be omitted, and for the words "special order as defined in the Electric Lighting (Clauses) Act, 1899," wherever they occur, there shall be substituted the words "local enactment (as defined by the Electricity Act, 1947) applicable to the Electricity Board".
- s. 29     ..     ..     ..     Subsection (2) shall be omitted, and at the end of the section the following subsection shall be added :—

"(4) If the said fund proves insufficient to defray the payments required to be made

<i>Enactment</i>	<i>Adaptation or Modification</i>
Electricity (Supply) Act, 1919 (9 & 10 Geo. 5, c. 100)— <i>cont.</i> s. 29— <i>cont.</i>	out of the fund under the last foregoing subsection, the deficit shall be made good by the Central Authority and the North of Scotland Board in such proportions as the Minister and the Secretary of State may determine ”.
s. 31 .. .. .	The words “ by a joint electricity authority or ” shall be omitted.
s. 36 .. .. .	The definitions of “ authorised undertakers ”, “ authorised distributors ”, “ power company ”, “ lighting authority ”, “ subsidiary company ” and “ sinking fund charges ” shall be omitted.
Electricity (Supply) Act, 1922 (12 & 13 Geo. 5, c. 46)	
s. 11 .. .. .	The words “ joint electricity authority or ”, wherever they occur, and the words “ authority or ” shall be omitted, and for the words “ the principal Act ”, wherever they occur, there shall be substituted the words “ the Electricity (Supply) Act, 1919 ”.
s. 25 .. .. .	In subsection (1), for paragraphs (a) (b) and (c) there shall be substituted the following paragraphs— “ (a) to the owners or lessees of any other railway generating station ; or (b) to any Electricity Board ; or (c) to any consumer, subject to the consent of the Area Board in whose area the premises to be supplied are situated or, if they are situated in the North of Scotland District, the North of Scotland Board ” ; and the words from “ Provided that ” to the end of paragraph (iii) shall be omitted.
Electricity (Supply) Act, 1926 (16 & 17 Geo. 5, c. 51)	
s. 24 .. .. .	For the words “ the Board ”, in both places where they occur, there shall be substituted the words “ an Electricity Board ”.
s. 34 .. .. .	In subsection (1) the words “ main transmission line or other ” shall be omitted and subsection (7) shall be omitted.
s. 35 .. .. .	For the words “ the Board ”, where they first occur, there shall be substituted the words “ an Electricity Board ” ; for the words “ work by this Act authorised ” and “ portion of the undertaking by this Act authorised ” there shall be substituted the words “ work of an Electricity Board ”.
s. 44 .. .. .	In subsection (1) for the word “ applications ” there shall be substituted the words “ application is ”, after the words “ place the line ” there shall be inserted the words “ or, as the case may be, may commence proceedings under the Acquisition of Land (Authorisation Procedure) Act, 1946, as applied by section nine of the Electricity Act, 1947, to purchase compulsorily a right to place the line ” and at the end of the subsection there shall be inserted the

*Enactment*

Electricity (Supply) Act, 1926  
(16 & 17 Geo. 5, c. 51)—*cont.*  
s. 44—*cont.*

s. 51

..

..

..

In subsection (1) the definitions of "generating station", "authorised undertakers", "local authority" and "absolute right of veto" shall be omitted; and subsections (2) to (5) shall be omitted.

*Adaptation or Modification*

words "or, as the case may be, under the said section twenty-one and under the said Act of 1946 as so applied"; in subsection (2) the words "the Board or", in the first place where they occur shall be omitted, the words "Board or" in the second place where they occur shall be omitted and after the words "Electricity (Supply) Act, 1919" there shall be inserted the words "or, in the case of the North of Scotland Board, under the provisions of the Act of 1943".

The Electricity Supply  
(Meters) Act, 1936 (26 Geo. 5  
& 1 Edw. 8, c. 20)

s. 1

..

..

..

The proviso to subsection (4) shall be omitted.

s. 2

..

..

..

Subsection (4) shall be omitted.

s. 3

..

..

..

The proviso to subsection (2) shall be omitted.

s. 5

..

..

..

In subsection (2), the words "except in relation to the administrative county of London" shall be omitted. [624]

*Electricity (Supply) Acts, 1882 to 1936.*—See note to s. 50, *ante*.

"Enactment" and "local enactment."—For definitions of these terms, see s. 67 (1), *ante*.

*Electric Lighting (Clauses) Act, 1899.*—7 Halsbury's Statutes 705.

*An Electricity Board.*—This term comprises any of the following: the British Electricity Authority, any of the Area Boards and the North of Scotland Board (s. 1 (3), *ante*).

*Electric Lighting Act, 1882, ss. 12, 13, 14, 15, 16, 18 and 31.*—7 Halsbury's Statutes 692, 693, 694, 698.

*Electric Lighting Act, 1909, ss. 2, 23 and 25.*—7 Halsbury's Statutes 745, 752, 753.

*Electricity (Supply) Act, 1919, ss. 10, 11, 15, 21, 22, 29, 31 and 36.*—7 Halsbury's Statutes 758, 762, 768, 773, 774, 776.

*Electricity (Supply) Act, 1922, ss. 11 and 25.*—7 Halsbury's Statutes 784, 790.

*Electricity (Supply) Act, 1926, ss. 24, 34, 35, 44 and 51.*—7 Halsbury's Statutes 808, 813, 814, 818, 821.

*Electricity Supply (Meters) Act, 1936, ss. 1, 2, 3 and 5.*—29 Halsbury's Statutes 133, 134, 135, 136.

*Acquisition of Land (Authorisation Procedure) Act, 1946.*—39 Halsbury's Statutes 52.

## PART II

## THE HYDRO-ELECTRIC DEVELOPMENT (SCOTLAND) ACT, 1943 [625]

*General note.*—This Part of the Schedule affects Scotland only.

## PART III

## THE SCHEDULE TO THE ELECTRIC LIGHTING (CLAUSES) ACT, 1899

*General Adaptation*

Subject to any specific adaptation or modification, for the words "the Special Order", wherever they occur throughout the Schedule, there shall be substituted the words "this Schedule".

Any words limiting any provision of the Schedule to cases where the local authority are not the undertakers shall be omitted.

For references to the Board of Trade, wherever they occur throughout the Schedule, except in section eighty, there shall be substituted references to the Minister, and for the words "Board of Trade regulations," wherever they so occur, there shall be substituted the words "Electricity regulations".

Provided that in relation to the North of Scotland District, for the said references to the Board of Trade (except in section ten, subsection (3) of section eighteen, sections thirty-five, thirty-eight, thirty-nine, forty-one, forty-two, forty-seven to fifty-one, fifty-nine and sixty-nine), there shall be substituted references to the Secretary of State.

*Specific Adaptations and Modifications**Section of  
Schedule**Adaptation or Modification*

- s. 1 .. .. After the words "Acts incorporated therewith" there shall be inserted the words "and of the Electricity Act, 1947 and, in relation to the North of Scotland District, of the Act of 1943"; in the definition of the expression "main" the words from "which may" to "place and" shall be omitted; in the definition of the expression "consumers' terminals" the words "and belonging to him" shall be omitted; and the definitions of "the Special Order" "area of supply" and "deposited map" shall be omitted; for the definition of "Board of Trade regulations" the following definition shall be substituted:—  
 "The expression 'Electricity regulations' means any regulations made by the Minister under the Electricity Act, 1947, for securing regularity and efficiency of supply and the safety of the public."
- s. 2 .. .. For this section the following section shall be substituted:—  
 "2. The expression 'Undertakers' means any Electricity Board, except that in sections twenty-one to thirty, thirty-nine to forty-nine, fifty-one to fifty-three, fifty-five and fifty-six, fifty-eight, sixty and eighty-one, the said expression does not include the Central Authority, and the said section eighty-one shall not apply to anything done or omitted to be done by the North of Scotland Board in operating a generating station."
- s. 4 .. .. For this section the following section shall be substituted:—  
 "The expression 'the area of supply' means—  
 (a) in relation to the Central Authority, the whole of Great Britain except the North of Scotland District;  
 (b) in relation to any Area Board, the area for which the Board is for the time being established; and  
 (c) in relation to the North of Scotland Board, the North of Scotland District."
- s. 10 .. .. The words "public and private" and "as defined by the said Act" shall be omitted; and paragraph (b) shall not apply to electric lines the construction of which is authorised by a scheme under the Act of 1943, and in the said paragraph (b) for the words from "without" to "also" there shall be substituted the words "without the express consent or authorisation of the Minister of Fuel and Power and the express consent of the local authority also".
- s. 12 .. .. For this section the following section shall be substituted:—  
 "12. The provisions of this Schedule relating to the execution of works in, under, along, or across any street or part of a street not repairable by the local authority, or over or under, any railway or tramway, shall, in the case of the North of Scotland Board or any Area Board, only apply to streets, railways or tramways (if any), or parts thereof, which the Board are specially authorised to break up by any local enactment applicable to the Board, or to the breaking up of which the Minister has consented under section thirteen of the Electric Lighting Act, 1882, but save as aforesaid nothing in this Schedule shall authorise any such Board to break up or interfere with any such street, railway or tramway without the consent of the authority or person by whom it is repairable."
- s. 14 .. .. Subsection (3) shall be omitted.
- s. 16 .. .. The words "for the purposes of the Special Order" shall be omitted; and paragraph (h) shall be omitted.



*Section of  
Schedule*

*Adaptation or Modification*

- s. 17 .. .. Paragraph (j) shall be omitted.
- s. 18 .. .. Subsection (7) shall be omitted.
- s. 20 .. .. In subsections (1) and (2) after the words "electric signalling communication" there shall be inserted the words "or electrical control of railways".
- s. 21 .. .. Subsection (1) shall be omitted; in subsection (2) the words "In addition to the mains herein-before specified" shall be omitted, for the words "commencement of the Special Order" there shall be substituted the words "vesting date", the word "other" shall be omitted, and after the words "part of a street," there shall be inserted the words "or along any other route"; and in subsection (3) for the words "the Special Order" there shall be substituted the words "a local enactment".
- s. 23 .. .. In subsection (1) the words from "and if the Board of Trade" to the end of the subsection shall be omitted and subsections (2) and (3) shall be omitted.
- s. 24 .. .. In subsection (1) there shall be substituted for the words "distributing mains" the words "a distributing main"; after the words "throughout any street or part of a street" there shall be inserted the words "or along any other route"; after the words "along that street or part of a street" there shall be inserted the words "or within reasonable proximity of such route".
- s. 27 .. .. In subsection (4) for the words "lamp or burner," in both places where they occur, there shall be substituted the words "electrical fittings".
- s. 35 .. .. In subsection (1) the words from the beginning to "while the local authority are themselves the undertakers," and the words "on the application of any consumer or of the undertakers," shall be omitted and subsection (2) shall be omitted.
- s. 36 .. .. For subsection (2) there shall be substituted the following subsection :  

"(2) The Minister may prescribe by regulations the manner in which and the times at which any such duties are to be performed by an electric inspector and also the fees to be taken by him, and any fees taken by an electric inspector shall be paid by him to the Minister."
- s. 39 .. .. For the words "under the provisions of an order made" there shall be substituted the words "with the written authority given" and for the words "an order made" there shall be substituted the words "a written authority given".
- s. 41 .. .. In subsection (1) for the words "the local authority think" there shall be substituted the words "the Minister thinks" and subsections (2) and (3) shall be omitted.
- s. 43 .. .. Subsection (2) shall be omitted.
- s. 47 .. .. The words "authority or" shall be omitted in both places where they occur.
- s. 48 .. .. In subsection (1) the words "by a court of summary jurisdiction, or (where the inspector is appointed by them)" and "if a local authority are the undertakers" shall be omitted; and in subsection (2) the words "the court or" and "by whom the fees are ascertained" shall be omitted.
- s. 49 .. .. The words "under the Special Order" shall be omitted.
- s. 60 .. .. In subsection (1) for the words "forthwith after commencing to supply energy under the Special Order" there shall be substituted the words "within a period of twelve months beginning

Section of  
Schedule

## Adaptation or Modification

with the vesting date "; and in subsection (2) after the words " area of supply " there shall be inserted the words " or, in the case of the North of Scotland Board, at their offices most convenient to the area of supply "; and at the end of subsection (3) there shall be inserted the following words—

" Provided that a local authority shall only be entitled to require a copy of so much of any such map as relates to the area of that local authority."

- s. 62 .. .. Subsections (1) (2) and (3) shall be omitted.  
s. 69 .. .. Subsection (3) shall be omitted.  
s. 71 .. .. The words " or by " shall be omitted.  
s. 76 .. .. Subsection (2) shall be omitted.  
s. 81 .. .. After the words " Special Order " there shall be inserted the words " or any local enactment " .  
s. 83 .. .. Paragraphs (2), (5) and (6) shall be omitted.  
Appendix .. The like amendments shall be made in section twelve of the Electric Lighting Act, 1882, as set out in the Appendix, as are made in that section by Part I of this Schedule. [626]

*Electric Lighting (Clauses) Act, 1899, Sched., ss. 1, 2, 4, 10, 12, 14, 16, 17, 18, 20, 21, 23, 24, 27, 35, 36, 39, 41, 43, 47, 48, 49, 60, 62, 69, 71, 76, 80, 81, Appendix.*—7 Halsbury's Statutes 706, 707, 708, 711, 712, 713, 716, 717, 719, 720, 721, 722, 723, 724, 727, 728, 729, 730, 731, 733, 734, 737, 738, 739, 740.

*Electric Lighting Act, 1882, ss. 12 and 13.*—7 Halsbury's Statutes 692, 693.

## Section 57

## FIFTH SCHEDULE

## ENACTMENTS REPEALED

Session and Chapter	Short title	Extent of repeal
45 & 46 Vict. c. 56.	The Electric Lighting Act, 1882.	Sections 2 to 11, 19, 20, 29 and 30, and the Schedule.
51 & 52 Vict. c. 12.	The Electric Lighting Act, 1888.	Sections 1 to 3.
53 & 54 Vict. c. 13.	The Electric Lighting (Scotland) Act, 1890.	The whole Act.
62 & 63 Vict. c. 19.	The Electric Lighting (Clauses) Act, 1899.	Sections 1 and 2, except for the definition of the expression " Electric Lighting Acts " and subsection (1) of section 2 ; in the Schedule to the Act, sections 3, 5 to 9, 31 to 34, 37, 63 to 68, 70, 74, 75, 78 and 82.
2 Edw. 7, c. 35.	The Electric Lighting (Scotland) Act, 1902.	The whole Act.
9 Edw. 7, c. 34.	The Electric Lighting Act, 1909.	Sections 1, 3 to 9, 12 to 14, 20, 24, and Schedule 1.
9 & 10 Geo. 5, c. 100.	The Electricity (Supply) Act, 1919.	Sections 5 to 9, 12, 13, 16 to 20, 23, 24, 26 to 28, 30, 32, 35, and the Schedule.
12 & 13. Geo. 5, c. 46.	The Electricity (Supply) Act, 1922.	Sections 1 to 10, 12 to 22, 24, 26 to 30, and the Schedule.
15 & 16 Geo. 5, c. 44.	The Statutory Gas Companies (Electricity Supply Powers) Act, 1925.	The whole Act.

Session and Chapter	Short title	Extent of repeal
16 & 17 Geo. 5, c. 51.	The Electricity (Supply) Act, 1926.	Sections 1 to 23, 25 to 32, 36 to 42, 46 to 49, Schedules 1 to 4, and Schedules 5 and 6 so far as they amend sections repealed by this Act, and Schedule 7.
19 & 20 Geo. 5, c. 4.	The Electricity (Supply) Act, 1928.	The whole Act.
23 & 24 Geo. 5, c. 46.	The Electricity (Supply) Act, 1933.	The whole Act.
23 & 24 Geo. 5, c. 51.	The Local Government Act, 1933.	In section two hundred and eighteen paragraph (a) of the definition of "sanctioning authority".
25 & 26 Geo. 5, c. 3.	The Electricity (Supply) Act, 1935.	The whole Act.
2 & 3 Geo. 6, c. 31.	The Civil Defence Act, 1939.	Section 42 and Schedule 1.
6 & 7 Geo. 6, c. 32.	The Hydro-Electric Development (Scotland) Act, 1943.	Section 4, section 6 (except as regards schemes already approved thereunder); sections 19 to 21; and Schedule 5.
8 & 9 Geo. 6, c. 34.	The Hydro - Electric Undertakings (Valuation for Rating) (Scotland) Act, 1945.	Section 5.

[627]

*Electric Lighting Act*, 1882, ss. 2-11, 19, 20, 29 and 30, and *Sched.*—7 Halsbury's Statutes 686-692, 695, 698, 700.

*Electric Lighting Act*, 1888, ss. 1-3.—7 Halsbury's Statutes 702-703.

*Electric Lighting (Clauses) Act*, 1899, ss. 1 and 2, and *Sched.*, ss. 3, 5-9, 31-34, 37, 63-68, 70, 74, 75, 78 and 82.—7 Halsbury's Statutes 705, 706, 707, 708-711, 726-727, 728, 735-737, 738, 739, 740.

*Electric Lighting Act*, 1909, ss. 1, 3-9, 12-14, 20 and 24, and *Sched. I.*—7 Halsbury's Statutes 744, 745-749, 750, 751, 753, 754.

*Electricity (Supply) Act*, 1919, ss. 5-9, 12, 13, 16-20, 23, 24, 26-28, 30, 32 and 35, and *Sched.*—7 Halsbury's Statutes 756-758, 759, 761, 764-767, 771, 772, 773, 774, 775, 778.

*Electricity (Supply) Act*, 1922, ss. 1-10, 12-22, 24 and 26-30, and *Sched.*—7 Halsbury's Statutes 778-784, 785-789, 790, 791-792, 727.

*Electricity (Supply) Act*, 1926, ss. 1-23, 25-32, 36-42 and 46-49, and *Scheds. I to IV, V, VI and VIII.*—7 Halsbury's Statutes 792-808, 809-812, 756 and 815-817, 818-821, 822-824, 825.

*Electricity (Supply) Act*, 1928.—7 Halsbury's Statutes 826.

*Electricity (Supply) Act*, 1933.—26 Halsbury's Statutes 137.

*Local Government Act*, 1933, s. 218.—26 Halsbury's Statutes 424.

*Electricity (Supply) Act*, 1935.—28 Halsbury's Statutes 51.

*Civil Defence Act*, 1939, s. 42 and *Sched. I.*—32 Halsbury's Statutes 859, 893.

## ORDERS, CIRCULARS AND MEMORANDA

### ELECTRICITY (CENTRAL AUTHORITY AND AREA BOARDS) REGULATIONS, 1947

S. R. & O., 1947, No. 1750

August 14, 1947

The Minister of Fuel and Power (in these Regulations referred to as "the Minister") in exercise of the power conferred on him by section three of the Electricity Act, 1947 (in these Regulations referred to as "the Act"), and

of all other powers enabling him in that behalf, hereby makes the following Regulations :—

1.—(1) Subject to the provisions of the Act and of these Regulations, the appointment of a member :—

- (a) of the Central Authority, being a member appointed by the Minister in pursuance of paragraph (a) of subsection (2) of section three of the Act ; and
- (b) of an Area Board, being a member appointed by the Minister in pursuance of paragraph (a) of subsection (3) of that section ;

shall be for such term not exceeding five years as may be determined by the Minister before the appointment of such member, and upon such conditions as may be determined by the Minister, with the approval of the Treasury, either before the appointment of such member or, with his consent, at any time thereafter.

(2) A member of the Central Authority or of an Area Board appointed as aforesaid shall be eligible for reappointment.

(3) Subject to the provisions of the Act and of these Regulations, the appointment of a member of the Central Authority being a member appointed by the Minister in pursuance of paragraph (b) of subsection (2) of the said section three shall be for such term not exceeding three years as may be determined by the Minister before the appointment of such member. [628]

2.—(1) Every such member of the Central Authority or of an Area Board as is mentioned in the preceding Regulation shall forthwith disclose to the Minister full particulars of :—

- (a) any interest or securities in any undertaking carrying on a business similar to that at any time carried on by that Authority or Board which he, whether in his own name or in the name of a nominee, for his own benefit holds or acquires or to which he is or becomes entitled for his own benefit under any will or succession ;
- (b) any trade or business in which he is or becomes engaged ;
- (c) any appointment by virtue of which he is or becomes a director or officer of any body corporate or an officer or servant of any organisation of workpeople.

(2) Any such member as aforesaid shall at any time, if so required by the Minister, sell or dispose of any interest or securities disclosed by him in pursuance of sub-paragraph (a) of the preceding paragraph to such extent and within such period as the Minister may direct.

(3) In this Regulation the expression “ securities ” includes shares, stock, debentures and debenture stock. [629]

3.—(1) Every member of the Central Authority or of an Area Board who is in any way, whether directly or indirectly, interested in any contract made or proposed to be made by that Authority or Board shall disclose the nature of his interest at a meeting of that Authority or Board, and the disclosure shall be forthwith recorded in the minutes of that Authority or Board ; and such member shall not take part in any deliberation or decision of that Authority or Board with respect to that contract.

(2) A general notice given by a member of the Central Authority or of an Area Board to the effect that he is a member of a specified company or firm, and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm shall, for the purposes of the preceding paragraph, be deemed to be a sufficient disclosure of the nature of his interest in relation to any contract made or proposed to be made as therein mentioned. [630]

4.—(1) If such a member of the Central Authority or of an Area Board as is mentioned in Regulation one of these Regulations :—

- (a) is absent from meetings of the Authority or Board for more than six months consecutively except for some reason approved by the Minister ;
- (b) becomes in the opinion of the Minister unfit to continue in office or incapable of performing his duties ;
- (c) at any time, after being notified of the Minister's disapproval thereof, either is engaged in any trade or business or holds any such appointment as is mentioned in sub-paragraph (c) of paragraph (1) of Regulation two of these Regulations ;

the Minister may declare the office of that member to be vacant and shall notify the fact in such manner as the Minister thinks fit ; and thereupon that office shall become vacant.

(2) Any such member as is mentioned in the said Regulation one, may resign his office by not less than three months' notice in writing under his hand given to the Minister.

(3) Any member of the Central Authority who is a member appointed by the Minister in pursuance of paragraph (b) of subsection (2) of section three of the Act shall, on ceasing to hold the office of chairman of the Area Board which he held at the time when he was so appointed, cease to be a member of that Authority. [631]

5.—(1) No meeting of the Central Authority shall be held unless the chairman or one of the deputy chairmen is present unless none of them is available and one of them approves in writing of such a meeting being held ; and at any meeting of that Authority six shall be a quorum.

(2) No meeting of an Area Board shall be held unless the chairman or deputy chairman is present unless neither of them is available and either of them approves in writing of such a meeting being held ; and at any meeting of such a Board four shall be a quorum. [632]

6. The Central Authority and any Area Board shall have the power to act notwithstanding a vacancy among the members thereof. [633]

7. Every determination of the Central Authority or of an Area Board at any meeting of the Authority or Board shall be taken by the votes of the members of that Authority or Board present and voting or, in the case of difference between them, of the majority of such members ; if the votes of such members are equally divided, the person acting as chairman of the meeting shall have a second or casting vote. [634]

8. Minutes shall be kept of the proceedings of the Central Authority and of Area Boards, and any such minutes shall, if signed by a person purporting to have acted as chairman of the meeting to which the minutes relate, or of a meeting at which they were read, be evidence of those proceedings ; and a meeting to which any such minutes relate shall, unless the contrary is proved, be deemed to have been regularly convened and constituted. [635]

9. All acts done at any meeting of the Central Authority or of an Area Board shall, notwithstanding that it was afterwards discovered that there was some defect in the appointment of a person purporting to be a member of that Authority or Board, be as valid as if that defect had not existed. [636]

10. The seal of the Central Authority or of an Area Board shall be authenticated by the signature of the chairman of that Authority or Board, as the case may be, or of some other member of the said Authority or Board autho-

rised by that Authority or Board to act in that behalf, and of the secretary or some other person authorised by the said Authority or Board so to act. [637]

11. Any instrument or contract which, if executed or entered into by a person not being a body corporate, would not require to be under seal, may be executed or entered into on behalf of the Central Authority or of an Area Board by any member, officer or servant of that Authority or Board, as the case may be, generally or specially authorised by resolution of that Authority or Board in that behalf. [638]

12. Every document purporting to be an instrument executed or issued by the Central Authority or by an Area Board, and to be sealed with the seal of that Authority or Board, authenticated in the manner provided by Regulation ten of these Regulations, or to be signed by any member, officer or servant of that Authority or Board, as the case may be, authorised by that Authority or Board to act in that behalf, shall be received in evidence and be deemed to be so executed or issued without further proof, unless the contrary is shown. [639]

13. The Interpretation Act, 1889, shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament. [640]

14. These Regulations may be cited as the Electricity (Central Authority and Area Boards) Regulations, 1947. [641]

\* \* \* \* \*

### EXPLANATORY NOTE

*(This Note is not part of these Regulations, but is intended to indicate their general purport.)*

*These Regulations deal with the terms of appointment and tenure of office of members of the Central Authority, other than the Chairman of the North of Scotland Board, and of members of Area Boards, other than the Chairman of the Consultative Council for the area concerned.*

*The conditions under which the Minister may declare the office of a member vacant are laid down.*

*Provision is also made as to the quorum and proceedings of the Central Authority and Area Boards.*

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## ELECTRICITY (INFORMATION) REGULATIONS, 1947

S. R. & O., 1947, No. 2079

September 24, 1947

The Minister of Fuel and Power (in these Regulations referred to as "the Minister") in exercise of the powers conferred on him by sections thirty-five and forty-eight of the Electricity Act, 1947 (in these Regulations referred to as "the Act"), and of all other powers enabling him in that behalf, hereby makes the following Regulations :—

1. Every body which is or may be a body to whom Part II of the Act applies, and every person who is or may be a person to whom section forty-eight of the Act applies, shall furnish to the Minister, on being required so to do, all such information as the Minister may reasonably require for any purpose mentioned in relation to the Minister in section thirty-five or forty-eight, as the case may be, of the Act, and shall verify any information fur-

nished in such manner, and at or within such time and at such place, as the Minister may reasonably require. [642]

2. Every such body or person as aforesaid shall :—

- (a) produce to the Minister such books of account, records and documents, at or within such time and at such place, as the Minister may reasonably require for any such purpose as aforesaid ;
- (b) supply to the Minister such copies of and extracts from any such books, records and documents, and at or within such time and at such place, as the Minister may reasonably require for any such purpose as aforesaid ;
- (c) provide such facilities for the examination of any such books, records and documents, and the taking of copies thereof and extracts therefrom, and for the verification of any information furnished as aforesaid, as the Minister may reasonably require. [643]

3. The provisions of the preceding Regulations shall have effect in relation to any Electricity Board with the substitution for references to the Minister of references to the Electricity Board concerned. [644]

4.—(1) The expenses reasonably incurred by any such body or person as aforesaid in complying with any requirement made by the Minister or by an Electricity Board under the provisions of the preceding Regulations shall be paid by the Minister or the Board concerned.

(2) The High Court shall have power, on the application of a person aggrieved by a denial on the part of the Minister or of any Electricity Board to pay any such expenses as aforesaid, to give such directions as to the matter in question as appear to the Court to be just. [645]

5. Any person who—

- (a) wilfully obstructs any person in the exercise of any facilities provided under paragraph (c) of Regulation two of these Regulations shall be guilty of an offence against that Regulation ;
- (b) on being duly required in writing by virtue of Regulation one or two of these Regulations to furnish any information, or to produce any book, record or document, or to supply copies of or extracts therefrom, or to provide such facilities as are mentioned in paragraph (c) of the said Regulation two, makes default without reasonable cause or excuse in complying with the requirements shall be guilty of an offence against the said Regulation one or two, as the case may be ;

and a person guilty of any of those offences shall be liable on summary conviction to a fine not exceeding one hundred pounds and, if the offence in respect of which a person is convicted is continued after the conviction, such person shall be guilty of a further offence and liable in respect thereof on summary conviction to a fine not exceeding five pounds for each day on which the offence is so continued. [646]

6. The Interpretation Act, 1889, shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament. [647]

7.—(1) The provisions of this Regulation shall have effect for the purpose of the application of these Regulations to Scotland.

(2) For the reference to the High Court in paragraph (2) of Regulation four of these Regulations there shall be substituted a reference to the Court of Session. [648]



8. These Regulations shall come into force on the sixth day of October, 1947, and may be cited as the Electricity (Information) Regulations, 1947. [649]

\* \* \* \* \*

### EXPLANATORY NOTE

(This Note is not part of these Regulations, but is intended to indicate their general purport.)

These Regulations provide for the production or supply to the Minister or an Electricity Board by the various classes of electricity undertakings and persons to which Part II of the Act and section 48 applies or may apply of any books of account, records or extracts therefrom or such other information as they may reasonably require for purposes in connection with the Act; they also make provision for payment of expenses in connection with the Act; they also make provision for payment of expenses reasonably incurred in connection therewith.

### CASES

*Revenue—Stamp duty—Receipt—Electricity pre-payment meter card—Entry by collector—Stamp Act, 1891 (c. 39), s. 103 (1).*

O., a consumer of electricity supplied by the defendant company, paid in advance for his supply by means of coins inserted in a pre-payment meter. On March 8, 1944, a collector employed by the company called at O.'s house, inspected the meter, took out the coins, and entered in the "amount due and collected" column of his pre-payment collection sheet the sum of £2 7s. 11d., which was the balance due to the company after deducting rebate and a small amount put back into the meter. In the final column of his pre-payment collection sheet the collector wrote his initials. A carbon copy of the various entries made on the sheet appeared on a pre-payment meter card which was enclosed in an envelope and left on O.'s premises, the envelope stating on its face that the card was the property of the company. In a suit to recover a fine under the Stamp Act, 1891, s. 103 (1), for giving a receipt liable to duty and not duly stamped:—

*Held:* the phrase "gives a receipt" in s. 103 of the Stamp Act, 1891, must bear its ordinary *prima facie* meaning—viz., that the receipt is given in such a way that it can be retained by the recipient and will be available to him at any time as evidence of the payment which he has made, and the entry in the column "amount due and collected" in the circumstances in which O. had the pre-payment meter card in his possession was not a receipt given to him within the meaning of the subsection.

*Qu.*: whether a receipt given subject to a condition that it shall be returned to the giver of the receipt at the expiration of some period, or on some other condition, can ever be a receipt which is "given" within the meaning of the Stamp Act, 1891.

*Decision of* MACNAGHTEN, J. ([1946] K. B. 47; [1946] 2 All E. R. 324), *affirmed.*—A.-G. v. NORTHWOOD ELECTRIC LIGHT AND POWER CO., LTD., [1947] K. B. 511; [1947] 1 All E. R. 488; [1947] L. J. R. 1261; 176 L. T. 429; 111 J. P. 263; 63 T. L. R. 228; 45 L. G. R. 454; 26 A. T. C. 1, C. A. [650]

# EVACUATION AND BILLETING

## ORDERS, CIRCULARS AND MEMORANDA :—

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## ORDERS, CIRCULARS AND MEMORANDA

### EVACUATED AREAS (TERMINATION) ORDER, 1947

*S. R. & O., 1947, No. 98*

*January 20, 1947*

Whereas in pursuance of Regulation 3 of the Defence (Evacuated Areas) Regulations, 1940, the Minister of Home Security, on the dates specified in the first column of the Schedule to this Order, made Declarations that the areas described in the second column of the said Schedule should be evacuation areas for the purpose of the said Regulations :

And whereas it is expedient to appoint a day for the ending of the evacuation period for the purposes of the said Regulations (which give certain relief in respect of rent, rates and other local debts) in relation to each of the areas so declared to be evacuation areas :

Now, therefore, in pursuance of the powers conferred on me by Regulation 2 of the Defence (Evacuated Areas) Regulations, 1940, as having effect by virtue of the Emergency Laws (Transitional Provisions) Act, 1946, I [the Secretary of State] hereby order as follows :—

1. The thirty-first day of March, 1947, shall be the day on which the evacuation period, for the purposes of the said Regulations, shall end in relation to each of the areas which were by the aforesaid Declarations declared to be evacuation areas. [651]

2. This Order may be cited as the Evacuated Areas (Termination) Order, 1947. [652]

\* \* \* \* \*

### SCHEDULE

Date of Declaration	Description of area declared to be an evacuation area
16th July, 1940 ..	The county borough of Great Yarmouth.
16th July, 1940 ..	The borough of Lowestoft in the county of Suffolk.
16th July, 1940 ..	The borough of Southwold in the county of Suffolk.
16th July, 1940 ..	The borough of Aldeburgh in the county of Suffolk.
16th July, 1940 ..	The urban district of Felixstowe in the county of Suffolk.
16th July, 1940 ..	The borough of Harwich in the county of Essex and portions of the parish of Ramsey in the rural district of Tendring.
16th July, 1940 ..	The urban district of Frinton and Walton in the county of Essex.
16th July, 1940 ..	The urban district of Clacton-on-Sea in the county of Essex.
16th July, 1940 ..	The county borough of Southend-on-Sea.
16th July, 1940 ..	The borough of Margate in the county of Kent.
16th July, 1940 ..	The urban district of Broadstairs in the county of Kent.
16th July, 1940 ..	The borough of Ramsgate in the county of Kent and the parish of Minster in the rural district of Eastry.
16th July, 1940 ..	The borough of Sandwich in the county of Kent.

Date of Declaration	Description of area declared to be an evacuation area
16th July, 1940 ..	The borough of Deal in the county of Kent.
16th July, 1940 ..	The borough of Dover in the county of Kent, and, in the rural district of Dover, the parishes of St. Margaret-at-Cliffe, Temple Ewell and River (Without), and parts of the parish of Ringwould.
16th July, 1940 ..	The borough of Folkestone in the county of Kent.
16th July, 1940 ..	The borough of Hythe in the county of Kent.
21st August, 1940 ..	A portion of the parish of Trimley St. Mary in the rural district of Deben in the administrative county of East Suffolk.
21st August, 1940 ..	Parts of the borough of Rye in the administrative county of East Sussex and of the parishes of Fairlight, Pett, Icklesham, Saint Thomas the Apostle (Winchelsea) and Broomhill.
21st August, 1940 ..	Part of the urban district of Shoreham-by-Sea in the administrative county of West Sussex.
12th September, 1940	The county borough of Ipswich.
12th September, 1940	The borough of Colchester in the county of Essex.
12th September, 1940	The county borough of Canterbury.
12th September, 1940	The urban district of Ashford in the county of Kent.
12th September, 1940	The borough of New Romney in the county of Kent.
12th September, 1940	The borough of Lydd in the county of Kent.
12th September, 1940	The borough of Rye in the administrative county of East Sussex.
12th September, 1940	The county borough of Hastings.
12th September, 1940	The borough of Bexhill in the administrative county of East Sussex and part of the parish of Pevensey in the rural district of Hailsham.
12th September, 1940	The county borough of Eastbourne.
12th September, 1940	The urban district of Seaford in the administrative county of East Sussex.
12th September, 1940	The urban district of Newhaven in the administrative county of East Sussex.
6th June, 1941 ..	A portion of the urban district of Benfleet in the county of Essex.
6th June, 1941 ..	A portion of the parish of Nacton in the rural district of Deben in the administrative county of East Suffolk.
6th June, 1941 ..	The parish of Dymchurch in the rural district of Romney Marsh in the county of Kent and part of the parish of St. Mary in the Marsh.
6th June, 1941 ..	Parts of the parishes of Westham and Pevensey in the rural district of Hailsham.
25th June, 1941 ..	Part of the parish of Icklesham in the rural district of Battle in the administrative county of East Sussex.
	[653]

Circular 42/47

To:—

*Billeting Authorities for action,  
All other Local Authorities for information.*

MINISTRY OF HEALTH,  
WHITEHALL,  
LONDON, S.W.1.  
5th March, 1947.

SIR,

## GOVERNMENT EVACUATION SCHEME

I. *Disbandment of Billeting Organisation of Local Authorities*

1. I am directed by the Minister of Health to say that, in view of the winding up of the Government Evacuation Scheme, it appears to him that

the time has come to bring to an end the war-time billeting organisations of Local Authorities.

2. In the majority of reception areas there are now few evacuees remaining and the billeting work arising from their continued presence in any one area should in future constitute so small a burden on the staff of the Local Authority concerned that they will doubtless be willing to nominate one of their officers to undertake it as a minor part of his normal functions. The Minister, has, therefore, decided that all present charges in respect of Local Authorities' billeting organisations shall cease to be borne by the Exchequer on 31st March, 1947. He regrets that it has not been possible to notify Authorities earlier of this decision, and if it should involve the termination of the services of any officer and the necessary period of notice extends beyond 31st March, reimbursement will be made of salary or wages up to the date on which the notice expires.

3. If in any area the number of persons remaining billeted is still so considerable as to involve a substantial amount of billeting work, the Minister will be prepared, on application to this Office, to consider some temporary special arrangement.

4. The Minister is aware that in addition to finding billets for persons evacuated under the Government Evacuation Scheme, much valuable work has been done by Authorities, through their billeting organisations, in securing accommodation for transferred workers. The Ministry of Labour and National Service will be taking steps to assist in providing accommodation for industrial workers (but not wives or families) transferred through their machinery, or with their approval, to work to which priority is given under current Government policy, and it is hoped that Authorities will find it possible to co-operate with the local officers of the Ministry of Labour and National Service by nominating one of their staff to deal with general enquiries regarding available accommodation and to give such other assistance as he can. Authorities will recognise the desirability of their continuing, as part of their normal duties, to keep lodging lists with a view to helping employers of labour to find accommodation for additional workers the employers may themselves attract to the area.

5. The provisions of Circular 2443 dated 31st July, 1941, relating to compensation to householders for damage attributable to transferred workers will cease to apply in respect of damage arising after 31st March, 1947; thereafter householders should look to the transferred workers direct for such compensation.

### *II. Disposal of Billeting Notice Counterfoils*

6. Counterfoils of billeting notices which expired on or before 31st March, 1945, can now be disposed of as waste provided that they do not form an integral part of the Authority's records and that the audit of the accounts has been completed and the accounts certified by the District Auditor.

### *III. Disposal of Post Office Receipts for Billeting Payments*

7. Post Office receipts relating to the three years ended 31st March, 1945, may now be disposed of as waste as soon as the audit of the Council's accounts for those years has been completed and the accounts certified by the District Auditor.

8. The Minister desires me to express to Local Authorities, and to the members of their billeting organisations, his grateful appreciation of their services, which contributed so materially to the successful carrying out of Government policy with regard to evacuation and the transfer of Civil Servants and other workers.

I am, Sir, etc.

\* \* \* \* \*

The Clerk to the Authority.

[654]

## FINANCE

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## STATUTES

### COUNTY COUNCILS ASSOCIATION EXPENSES (AMENDMENT) ACT, 1947

(10 & 11 Geo. 6, c. 13)

#### PRELIMINARY NOTE

This short Act, which came into force when it received the Royal Assent on March 11, 1947, raises the maximum annual subscription which county councils in England and Wales may pay to the County Councils Association, and enables future alterations to be effected by Order in Council.

County councils in England and Wales were empowered to make annual payments to the Association as general expenses out of county funds by the County Councils Association Expenses Act, 1890 (10 Halsbury's Statutes 772) subject to a yearly maximum of £31 10s. 0d., which has twice been increased by amending Acts, first to £42 in 1920 and later to £157 10s. 0d. in 1937 (County Councils Association Expenses (Amendment) Acts, 1920 and 1937 ; 10 Halsbury's Statutes 859 and 30 Halsbury's Statutes 383).

The functions of county councils have been greatly increased as a result of recent legislation, *e.g.*, the Education Act, 1944 (37 Halsbury's Statutes 123), and the Police Act, 1946 (39 Halsbury's Statutes 616), and the volume of work falling on the County Councils Association has correspondingly grown, with the result that their income from subscriptions has become inadequate to meet present needs. The present Act therefore increases the maximum subscription to £262 10s. 0d., the sum agreed by the Government with the Association. The Parliamentary Secretary to the Ministry of Health, in moving the Second Reading of the Bill, stated that this sum would result in a total income to the Association of about £8500, equivalent over the whole of the county to an extra county council rate of one-seventieth of a penny (432 H. of C. Official Report 2125).

In addition, in order to obviate any need for further legislation on the subject, the Act enables future alterations in the maximum subscription to be effected by Order in Council. [655]

*An Act to alter the maximum annual subscription which county councils may pay to the County Councils Association.* [656] [11th March, 1947.]

**1. Maximum annual subscription.**—(1) Section one of the County Councils Association Expenses Act, 1890, which, as amended by the County Councils Association Expenses (Amendment) Act, 1937, empowers the council of

an administrative county to pay any sum not exceeding one hundred and fifty-seven pounds and ten shillings in any one year as a subscription to the funds of the County Councils Association, shall have effect as if the sum of two hundred and sixty-two pounds and ten shillings were therein substituted for the sum of one hundred and fifty-seven pounds and ten shillings. [657]

(2) His Majesty may by Order in Council substitute for the said sum of two hundred and sixty-two pounds and ten shillings such other sum as to His Majesty may seem proper. [658]

(3) A copy of any such Order in Council as aforesaid shall be laid before each House of Parliament after it has been made, and if either House, within the period of forty days beginning with the day on which a copy of the Order is laid before it, resolves that an Address be presented to His Majesty praying that the Order be revoked, no further action shall be taken thereunder after the date of the resolution, and His Majesty may by Order in Council revoke the Order; but the resolution and revocation shall be without prejudice to anything previously done under the Order or to the making of a new Order.

In reckoning the said period of forty days, no account shall be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days. [659]

(4) Section one of the Rules Publication Act, 1893, shall not apply to an Order in Council made under this Act. [660]

(5) Any such Order in Council as aforesaid may be varied or revoked by subsequent Order in Council made in like manner. [661]

*County Councils Association Expenses Act, 1890.*—10 Halsbury's Statutes 772. Note that the provision of this Act allowing payment of reasonable expenses of the attendance of not more than four representatives at meetings of the Association is unaffected.

*County Councils Association Expenses (Amendment) Act, 1937.*—30 Halsbury's Statutes 383. The County Councils Association Expenses (Amendment) Act, 1920 (10 Halsbury's Statutes 859), was repealed by this Act.

*Order in Council.*—No Order in Council had been made under this section up to the date of going to press. Note that the maximum could be reduced as well as increased by Order in Council under sub-s. (2), *supra*.

*Effect of Statutory Instruments Act, 1946.*—This Act came into full operation on January 1, 1948 (see S.I. 1948 No. 3).

Documents made after its commencement and in exercise of certain statutory powers conferred by Acts passed before its commencement are "statutory instruments" regulated by the Act (Statutory Instruments Act, 1946, s. 1 (2); 39 Halsbury's Statutes 784). The class of documents to which the Act applies is defined in a manner depending on the meaning of "statutory rules" in the Rules Publication Act, 1893 (18 Halsbury's Statutes 1018), and includes Orders in Council.

*Rules Publication Act, 1893, s. 1.*—18 Halsbury's Statutes 1016.

**2. Citation and extent.**—(1) This Act may be cited as the County Councils Association Expenses (Amendment) Act, 1947; and the County Councils Association Expenses Acts, 1890 and 1937, and this Act may be cited together as the County Councils Association Expenses Acts, 1890 to 1947. [662]

(2) This Act shall not extend to Scotland or Northern Ireland. [663]

*County Councils Association Expenses Acts, 1890 to 1937.*—The County Councils Association Expenses Act, 1890 (10 Halsbury's Statutes 772), and the County Councils Association Expenses (Amendment) Act, 1937 (30 Halsbury's Statutes 383).

## ORDERS, CIRCULARS AND MEMORANDA

### LOCAL AUTHORITIES STOCK (SINKING FUNDS, AMENDMENT OF RATE OF ACCUMULATIONS) ORDER, 1947

S. R. & O., 1947, No. 431

March 10, 1947

Whereas by virtue of paragraph (a) of Article 7 (1) of the Local Authorities (Stock) Regulations, 1934, the Minister of Health is empowered to determine

from time to time the rate of accumulations which, together with certain equal annual sums, are to be carried to Stock (Sinking Fund) Accounts.

And whereas by various consent orders made under the said Regulations the Minister of Health consented to the determination by local authorities that the amounts to be carried to Stock (Sinking Fund) Accounts should be certain equal annual sums with accumulations at rates exceeding two and a half per centum per annum.

And whereas it is expedient that in all cases the said rates of accumulations should be reduced to two and a half per centum per annum.

Now therefore the Minister of Health in pursuance of the powers conferred on him by paragraph (a) of Article 7 (1) of the said Regulations hereby orders as follows :—

1. This order may be cited as the Local Authorities Stock (Sinking Funds, Amendment of Rate of Accumulations) Order, 1947, and shall come into operation on the date hereof. [664]

2. The Minister of Health hereby determines that the rate of accumulations for the purpose of paragraph (a) of Article 7 (1) of the said Regulations shall be two and a half per centum per annum. [665]

\* \* \* \*

## LOCAL GOVERNMENT (SINKING FUNDS, RATE OF ACCUMULATION) REGULATIONS, 1947

*S. R. & O., 1947, No. 432*

*March 10, 1947*

Whereas by the Local Government (Sinking Funds, Rate of Accumulation) Regulations, 1934, the Minister of Health prescribed the rate of accumulation to certain sinking funds authorised by section 213 of the Local Government Act, 1933, as three per centum per annum.

And whereas it is expedient that the said rate of accumulation should be varied :

Now therefore the Minister of Health in pursuance of the powers conferred on him by the said section 213 hereby makes the following regulations :—

1. These regulations may be cited as the Local Government (Sinking Funds, Rate of Accumulation) Regulations, 1947, and shall come into operation on the date hereof. [666]

2. The Local Government (Sinking Funds, Rate of Accumulation) Regulations, 1934, are hereby revoked. [667]

3. The prescribed rate of accumulation for the purpose of the said section 213 shall be two and one-half per centum per annum. [668]

\* \* \* \*

## PRIVATE IMPROVEMENT EXPENSES (RATE OF INTEREST) AMENDMENT ORDER, 1947

*S. R. & O., 1947, No. 433*

*March 10, 1947*

Whereas by the Ministry of Health (Rate of Interest on Private Improvement Expenses) Order, 1934, the Minister of Health fixed the rate of interest



on expenses recoverable by a local authority or a county council under the enactments mentioned in section 77 of the Public Health Act, 1925, at four per centum instead of the rate of five per centum prescribed by that section.

And whereas it is expedient that the said rate of interest should be varied :

Now therefore the Minister of Health in pursuance of the powers conferred on him by the said section 77 hereby orders as follows :—

1. This order may be cited as the Private Improvement Expenses (Rate of Interest) Amendment Order, 1947, and shall come into operation on the date hereof. [669]

2. Subject to the provisions of this order the rate of interest on expenses recoverable by a local authority or a county council under the enactments mentioned in section 77 of the Public Health Act, 1925 (which relate to private improvement rates and expenses recoverable from owners of premises under section 213 or section 257 of the Public Health Act, 1875, and to private street works expenses charged on premises or recoverable from owners under section 13 or section 14 of the Private Street Works Act, 1892, or under any local Act provision), shall be two and one-half per centum per annum. [670]

3. This order shall not apply to—

- (i) any expenses which, or any part or instalment of which, became recoverable by the local authority or county council before the date of the commencement of this order ; and
- (ii) any expenses in respect of which, or any part of which, a private improvement rate has been made and levied before the date of the commencement of this order. [671]

4. Any order under section 77 of the Public Health Act, 1925, which is in force at the commencement of this order shall cease to have effect as respects any expenses to which this order relates but as regards other expenses shall, notwithstanding any limit of time prescribed by the order, remain in force until the Minister by order otherwise directs. [672]

\* \* \* \*

## PUBLIC HEALTH (RATE OF INTEREST) ORDER, 1947

*S. R. & O., 1947, No. 434*

*March 10, 1947*

The Minister of Health in pursuance of the powers conferred upon him by subsection (3) of section 291 of the Public Health Act, 1936, hereby orders as follows :—

1. This order may be cited as the Public Health (Rate of Interest) Order, 1947, and shall come into operation on the date hereof. [673]

2. Subject to the provisions of this order the maximum rate of interest for the purposes of the said section 291 (which makes certain expenses a charge on premises and empowers local authorities to order payment by instalments) shall be two and one-half per centum per annum. [674]

3. This order shall not apply to any expenses in respect of which the local authority has determined a rate of interest before the date of the commencement of this order. [675]

\* \* \* \*

**HOUSING (RATE OF INTEREST) AMENDMENT ORDER, 1947***S. R. & O., 1947, No. 445**March 10, 1947*

The Minister of Health, in pursuance of the powers conferred on him by subsections (3) and (5) of section 10 of the Housing Act, 1936, and of all other powers enabling him in that behalf, with the approval of the Treasury, hereby orders as follows :—

1. This order may be cited as the Housing (Rate of Interest) Amendment Order, 1947. [676]

2. The rate of interest on expenses incurred by a local authority under section 10 of the Housing Act, 1936 (which empowers local authorities to carry out works necessary to render a house fit for human habitation and to recover the cost of such works), and—

(a) demanded after the date of this order, or

(b) declared after the date of this order, by order of the local authority made under subsection (5) of the said section, to be payable by instalments,

shall be at the rate of two and a half per centum per annum instead of at the rate of four and a half per centum per annum as fixed by the Housing (Rate of Interest) Amendment Order, 1939. [677]

\* \* \* \* \*

**ORDER IN COUNCIL AMENDING REGULATION 6 OF THE DEFENCE (FINANCE) REGULATIONS, 1939***S. R. & O., 1947, No. 944**May 21, 1947*

His Majesty, in pursuance of section three of the Supplies and Services (Transitional Powers) Act, 1945, and of all other powers enabling Him in that behalf, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows :—

1.—(1) Regulation six of the Defence (Finance) Regulations, 1939 (which provides for controlling capital issues, public offers for sale of securities, and renewal, or postponement of the date of maturity, of securities), shall cease to have effect in its application to England and Scotland, except as regards the making therein of a public offer for sale of securities of a body corporate incorporated under the law of either of those countries.

(2) The said Regulation in its application to Northern Ireland is hereby revoked. [678]

2.—(1) In accordance with the provisions of the preceding Article the following paragraphs shall be substituted for paragraphs (1) and (2) of the said Regulation six, that is to say—

“ (1) Subject to such exemptions as may be granted by order of the Treasury, it shall not be lawful, except with the consent of the Treasury, to make, in England or Scotland, any public offer for sale of securities of a body corporate incorporated under the law of either of those countries.

(1A) Subject to such exemptions as may be granted by order of the Governor, it shall not be lawful, except with the consent of the Governor,

to make an issue of capital in the Isle of Man, to make, in the Isle of Man, any public offer of securities for sale, or to renew, or postpone the date of maturity of, any security maturing for repayment in the Isle of Man.

(2) Subject to such exemptions as may be granted by order of the Treasury, it shall not be lawful to issue in England or Scotland any prospectus or other document publicly offering for sale any such securities as are mentioned in paragraph (1) of this Regulation, unless it includes a statement that the consent of the Treasury has been obtained to the offer of the securities.

(2A) Subject to such exemptions as may be granted by order of the Governor, it shall not be lawful to issue in the Isle of Man any prospectus or other document offering for subscription, or publicly offering for sale, any securities unless it includes a statement that the consent of the Governor has been obtained to the issue or offer of the securities."

(2) Nothing in this Order shall affect any order made, consent given or other thing done under or for the purposes of the said Regulation six in its application to the Isle of Man, but any such order, consent or thing shall, if in force at the date of the making of this Order, continue in force and shall, so far as it could have been made, given or done under this Order, have effect as if made, given or done under the corresponding provision of this Order. [679]

3. The Capital Issues Exemptions Orders of 1941, 1942, 1944 and 1945, are hereby revoked. [680]

4. This Order, in its application to the Isle of Man, shall be construed as one with the Supplies and Services (Transitional Powers) (Isle of Man) Order in Council, 1946. [681]

5. This Order shall come into operation on the sixteenth day of June, 1947. [682]

\* \* \* \*

### EXPLANATORY NOTE

*(This Note is not part of the Order, but is intended to indicate its general purport.)*

*Regulation 6 of the Defence (Finance) Regulations, 1939, made provision for the control of capital issues, public offers for sale of securities, renewals of securities and postponement of the maturity date of securities in the U.K. and the Isle of Man. The present Order revokes those provisions except in so far as they relate to the Isle of Man and to the making in England or Scotland of public offers for sale of securities of a body corporate incorporated under the law of those two countries.*

*So far as Northern Ireland is concerned, the Regulation is revoked completely, as the control of capital issues in Northern Ireland is now dealt with by legislation of the Northern Ireland Parliament. The revoked parts of Regulation 6, so far as they relate to England and Scotland, are being replaced by an Order under Section 1 of the Borrowing (Control and Guarantees) Act, 1946.*

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## CONTROL OF BORROWING ORDER, 1947

S. R. & O., 1947, No. 945

May 21, 1947

The Treasury in the exercise of the powers conferred upon them by section one of the Borrowing (Control and Guarantees) Act, 1946, hereby make the following Order :—

## PART I

## GENERAL EXTENT OF CONTROL

*Borrowing in Great Britain*

1.—(1) Subject to the exemptions contained in Part II of this Order, a person shall not, without the consent of the Treasury, borrow money in Great Britain where the aggregate of the amount of money borrowed and of any other amounts borrowed in Great Britain by that person in the previous twelve months (including any period before the coming into force of this Order) exceeds ten thousand pounds.

(2) This Article shall not apply to—

- (a) borrowing by any person, other than a local authority, if the borrowing is in the ordinary course of his business and is from a person carrying on a banking undertaking ;
- (b) borrowing by any person, other than a local authority, where the money borrowed is repayable on demand or not more than six months after demand and the loan is wholly unsecured or is secured only by a bill of exchange payable on demand or at a fixed period not exceeding six months after the date of the borrowing or after sight or by a promissory note payable not more than six months after the date of the borrowing ;
- (c) borrowing by a local authority for the sole purpose of defraying expenditure (including the payment of sums due by them to meet the expenses of other authorities) pending the receipt of revenues receivable by them in respect of the period of account in which that expenditure is chargeable, so long as—
  - (i) the expenditure is not capital expenditure ; and
  - (ii) the money is repayable not later than one month after the termination of that period of account ; and
  - (iii) the amount outstanding at any one time does not exceed one half of the total revenues received or receivable in respect of that period of account ;
- (d) acceptance by a person carrying on a banking undertaking or a member of the London Discount Houses Committee of moneys to be placed to the credit of a current or deposit account, whether or not any security is given ;
- (e) borrowing by the personal representative of a deceased person in his capacity as such for the purpose of paying death duties payable by reason of the death of the deceased ; and
- (f) borrowing from a department of His Majesty's Government in the United Kingdom.

For the purposes of this paragraph a loan in respect of which a guarantee is given is not an unsecured loan. [683]

*Postponement of repayment of principal moneys and of payment of price of certain property to be treated as borrowing*

2.—(1) In this Order references to the borrowing of money include :—

- (a) references to the making of any arrangement by which any money borrowed or any money due under a security (other than money representing interest or dividends), which would otherwise be payable at any date, is payable at a later date except where the money is payable by instalments and the arrangement is for the postponement of the payment of any instalment, other than

the last instalment, to a date not later than that fixed for the payment of the last instalment ; and

(b) references to the making of any arrangement by which the price of any property except—

(i) the price of goods sold by a person in the ordinary course of his business, and

(ii) the price of any undertaking under a sale thereof to a private company,

is allowed to remain unpaid for a fixed period or indefinitely but charged on the property,

but do not include references to the making of any other arrangement by which a sum which would otherwise be payable at any date is payable at a later date ; and references to loans shall be construed accordingly.

(2) An arrangement to give any guarantee or to mortgage or charge any property to secure the payment of any sum which is already due when the arrangement is made or is payable not later than six months after the arrangement is made shall be deemed for the purposes of this Article to be an arrangement by which that sum is payable at a date later than it would otherwise be payable.

(3) A sum which, at the time of, or by virtue of, the making of any arrangement is payable on demand or on the expiration of a fixed period after demand shall be deemed for the purposes of this Article to be payable at the time of the making of the arrangement, or as the case may be, on the expiration of the fixed period after the making of the arrangement, notwithstanding that no demand has been made. [684]

#### *Raising money by issue of shares*

3.—(1) Subject to the exemptions contained in Part II of this Order, a body corporate shall not, without the consent of the Treasury, raise money in Great Britain by the issue, whether in Great Britain or elsewhere, of any shares in that body corporate.

(2) This Article shall not apply to money raised by the issue of shares to the subscribers of a memorandum of association where the total consideration for the issue of all those shares issued to the said subscribers does not exceed five hundred pounds.

(3) This Article shall not apply to money raised by the issue by a private company of shares to the vendors or the nominees of the vendors of any undertaking sold to the company if

(a) the shares are all fully paid ; and

(b) the money raised is cash forming part of the assets of the undertaking or cash which has been paid to the vendors as, or as part of, the purchase price of the undertaking. [685]

#### *Issues of partly paid shares and other issues of securities*

4.—(1) Subject to the exemptions contained in Part II of this Order, a body corporate shall not, without the consent of the Treasury, issue partly paid shares, if either the body corporate is incorporated under the law of England or Scotland or the shares are or are to be registered in England or Scotland.

(2) Subject to the exemptions contained in Part II of this Order, a body corporate incorporated under the law of England or Scotland shall not, without the consent of the Treasury, issue any securities where the whole or any part of the consideration for the issue is the issue or transfer

of securities of another body corporate, unless one or other of the bodies corporate in question is to be wound up.

(3) Subject to the exemptions contained in Part II of this Order, a body corporate incorporated under the law of England or Scotland shall not, without the consent of the Treasury, issue any securities if the purposes or effects of the transaction consist of or include—

- (a) the capitalisation of profits or reserves ; or
- (b) the raising or borrowing of money outside Great Britain ; or
- (c) the exchanging or substituting of new securities for redeemable securities already issued.

(4) Subject to the exemptions contained in Part II of this Order, a body corporate not incorporated under the law of England or Scotland shall not, without the consent of the Treasury, issue any securities which are or are to be registered in England or Scotland if the purposes or effects of the transaction consist of or include—

- (a) the raising or borrowing of money outside Great Britain ; or
- (b) the exchanging or substituting of new securities for redeemable securities already issued. [686]

#### *Government securities*

5. Subject to the exemptions contained in Part II of this Order, no securities of any government, other than His Majesty's Government in the United Kingdom, which are or are to be registered in England or Scotland shall be issued for any purpose without the consent of the Treasury. [687]

#### *Prospectuses, etc.*

6. Subject to the exemptions contained in Part II of this Order, a person shall not, without the consent of the Treasury, circulate in Great Britain any offer for subscription, sale or exchange of—

- (a) any securities of any body corporate not incorporated under the law of England or Scotland ; or
- (b) any securities of any government other than His Majesty's Government in the United Kingdom,

if the offer is a public offer or an offer to existing holders of securities of the body corporate or government in question or to existing holders of securities of any body corporate specified in the offer. [688]

#### *Unit trusts*

7.—(1) Subject to the exemptions contained in Part II of this Order, a person shall not, without the consent of the Treasury—

- (a) raise money in Great Britain for the purposes of a unit trust scheme by the issue of any unit under the scheme ; or
- (b) issue any units under a unit trust scheme if the purposes or effects of the transaction consist of or include the raising of money outside Great Britain and either the scheme is governed by the law of England or Scotland or the units are or are to be registered in England or Scotland :

Provided that this paragraph shall not apply to the issue, or to the raising of money by the issue, of any unit or sub-unit under a unit trust scheme if the issue does not cause the total number of issued units or sub-units to exceed the total number outstanding on the twelfth day of May, nineteen hundred and forty-one, including units or sub-units which at the said date the trustees could be required by the managers of the trust to issue.

(2) Article 6 of this Order shall apply in relation to units under a unit trust scheme not governed by the law of England or Scotland as it applies in relation to securities of a body corporate not incorporated under the law of England or Scotland. [689]

## PART II

### GENERAL EXEMPTIONS

#### *Exemption where annual limit not exceeded*

8.—(1) Subject to the provisions of this Article, the consent of the Treasury shall not be required to the carrying out by any such person as is mentioned in any of the provisions of Part I of this Order of any transaction mentioned in that provision if the amount involved in the transaction together with the amount involved in all previous transactions by the same person in the previous twelve months, being transactions which are to be taken into account in accordance with paragraph (2) of this Article, does not exceed fifty thousand pounds.

(2) The previous transactions to be taken into account for the purposes of this Article are—

- (a) any borrowing of money in Great Britain except such borrowing as is mentioned in paragraph (2) of Article 1 of this Order, whether or not the consent of the Treasury under this Order was required thereto ; and
- (b) any other transaction to which the consent of the Treasury under this Order was required or would, apart from the provisions of this Part of this Order, have been required ;

and include transactions effected before the coming into force of this Order to which the preceding provisions of this paragraph would have applied if this Order had then been in force :—

Provided that

- (i) where the effect of any of the said previous transactions consisting of the borrowing or raising of money was that a capital liability (other than a capital liability in respect of any such borrowing as is mentioned in paragraph (2) of Article 1 of this Order) discharged contemporaneously with, or not more than three months before, that transaction was replaced by another capital liability, the amount involved in that transaction shall be treated as reduced by the amount so discharged ;
- (ii) where any of the said previous transactions consisted of an arrangement for postponing the repayment of money borrowed or raised, not being an arrangement to which paragraph (2) of Article 2 of this Order applies, the amount involved in that transaction shall be left out of account ;
- (iii) where any of the said previous transactions consisted solely of the borrowing of money which, subsequent to that borrowing, was repaid in whole or in part, the amount involved in that transaction shall be treated as reduced by the amount repaid unless the repayment formed part of any other of the said previous transactions and the whole or part of the amount involved in that other transaction has been left out of account by virtue of proviso (i) of this paragraph.

(3) The exemption conferred by this Article shall not apply to any issue of securities, if the purposes or effects of the transaction consist of or include the capitalisation of profits or reserves.

(4) The Treasury may at any time direct that the exemption conferred by this Article shall not apply to any person specified in the direction.



Any direction given under this paragraph may be revoked by a subsequent direction of the Treasury and any direction given by the Treasury under proviso (b) of sub-paragraph (1) of paragraph 1 of the Capital Issues Exemptions Order, 1941 (as amended by the Capital Issues Exemptions Order, 1944), shall have effect as if it had been given under this paragraph.

(5) In this Article, the expression "the amount involved" means—

- (a) in relation to the borrowing of money, the amount of money to be borrowed ;
- (b) in relation to the issue of securities or the raising of money by such an issue, the amount of the money to be raised or the total nominal value of the securities or the value of any assets to be acquired in return for the securities, whichever is the greatest ;
- (c) in relation to the circulation of an offer of securities,
  - (i) in the case of an offer to existing holders of securities registered in England or Scotland, the total price, under the offer, of the securities offered to such holders,
  - (ii) in any other case, the total price, under the offer, of all the securities offered ;
- (d) in relation to an arrangement for the postponement of payment of any money, the amount the payment of which is to be postponed.

The references in sub-paragraph (c) of this paragraph to the price of securities include, in the case of an offer of securities for exchange, references to the total value of the securities so offered.

(6) Paragraph (5) of this Article shall apply in relation to units under a unit trust scheme as it applies in relation to securities of a body corporate. [690]

#### *Building Societies and Industrial and Provident Societies*

9. Nothing in Part I of this Order applies to any borrowing or raising of money by, or any issue of securities of—

- (a) a society incorporated under the Building Societies Acts, 1874 to 1940, or such an unincorporated society as is mentioned in section seven of the Building Societies Act, 1874 ; or
- (b) a society registered under the Industrial and Provident Societies Act, 1893, whose business does not consist wholly or mainly in investing in land or securities. [691]

#### *Profit Sharing Schemes*

10. Nothing in Part I of this Order applies to any issue of shares made in pursuance of a profit sharing scheme whereby a share in the net profits from time to time made by a body corporate falls to be distributed on a pre-determined basis among all the employees of that body corporate who are entitled to participate in the scheme (not being less than three-quarters of the total number of employees of that body corporate) in the form, either wholly or in part, of fully paid shares and such distribution is made in addition to the payment to such employees of wages at rates standard in the industry of which that body corporate forms part. [692]

#### *Exemption for transactions sanctioned by the Ministry of Finance, Northern Ireland*

11. Where the consent of the Ministry of Finance, Northern Ireland, under any Order made in pursuance of the Loans Guarantee and Borrowing Regulation (Northern Ireland) Act, 1946, has been given to the carrying out of any transaction to which that Order applies, then, so long as that consent remains

in force and provided that any conditions attached to the consent are complied with, the consent of the Treasury under this Order shall not be required to the carrying out of that transaction. [693]

### PART III

#### SUPPLEMENTAL

##### *Provisions as to Treasury consent*

12.—(1) Any consent granted by the Treasury under this Order—

- (a) may be either general or special ;
- (b) may be revoked by the Treasury ;
- (c) may be absolute or conditional ; and
- (d) may be limited so as to expire at the end of a specified period unless renewed.

(2) Any consent granted by the Treasury under Regulation six of the Defence (Finance) Regulations, 1939, shall have effect as if it had been granted under the corresponding provision of this Order. [694]

##### *Definitions*

13.—(1) In this Order, unless the context otherwise requires,—

“ issue ” includes reissue ;

“ local authority ” means any authority being within the meaning of the Local Loans Act, 1875, or the Local Authorities Loans (Scotland) Act, 1891, an authority having power to levy a rate ;

“ registered ” in relation to any security or unit includes inscribed ; “ registered in England or Scotland ” means, in relation to securities or units, registered in a register in England or Scotland, and “ register,” in relation to securities or units, includes any book in which securities or units are registered ;

“ security ” includes shares, bonds, notes, debentures and debenture stock ;

“ share ” includes stock and any perpetual debenture or perpetual debenture stock ;

“ unit trust scheme ” means any arrangements made for the purpose, or having the effect, of providing facilities for the participation by persons, as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatsoever ;

“ unit ” means, in relation to a unit trust, any right or interest (described whether as a unit or as a sub-unit or otherwise) which may be acquired under the scheme, being a right or interest created or issued for the purpose of raising money for the purposes of the scheme or a right or interest created or issued in substitution (whether directly or indirectly) for any right or interest so created or issued.

(2) A person shall be deemed for the purposes of this Order to borrow or raise money in Great Britain if the money is made available in Great Britain or, in any such case as is mentioned in Article 2 of this Order, if the money would, but for the arrangement in question, have been payable in Great Britain, and, without prejudice to the preceding provisions of this paragraph, a person shall also be deemed for the purposes of this Order to borrow money in Great Britain if the money is borrowed on the security of property in Great Britain. [695]

*Application of Interpretation Act*

14. The Interpretation Act, 1889, shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament. [696]

*Saving*

15. The restrictions imposed by this Order shall, as respects local authorities, be in addition to and not in derogation of any restrictions imposed by or under the Local Authorities Loans Act, 1945. [697]

16. This Order applies to the borrowing or raising of money in pursuance of authority conferred by an Order made under an Act of Parliament passed before the 12th day of July, 1946, being the date of the passing of the Borrowing (Control and Guarantees) Act, 1946. [698]

*Short title and commencement*

17. This Order may be cited as the Control of Borrowing Order, 1947, and shall come into operation on the sixteenth day of June, 1947. [699]

\* \* \* \* \*

**EXPLANATORY NOTE**

*(This Note is not part of the Order, but is intended to indicate its general purport.)*

*The provisions of Regulation 6 of the Defence (Finance) Regulations, 1939, have been revoked except in so far as they relate to the Isle of Man and to the making in England and Scotland of public offers for sale of securities of a body corporate incorporated under the law of those countries. The Order which is made under Section 1 of the Borrowing (Control and Guarantees) Act, 1946, replaces the revoked parts of Regulation 6.*

*The principal provisions of the Order require, subject to certain exemptions and exceptions, Treasury consent to—*

- (1) the borrowing of money in Great Britain in excess of £10,000 in any period of twelve calendar months. For this purpose postponements of the repayment of a security and arrangements to leave the purchase price of property (except the price of goods sold in the ordinary course of trading, or of an undertaking sold to a private company) charged on that property are included as borrowing;*
- (2) the raising of money in Great Britain by the issue of shares in a body corporate;*
- (3) the issue of securities by bodies corporate incorporated under the law of England or Scotland for the raising or borrowing of money outside Great Britain, for the capitalisation of profits or reserves, for conversion operations and for other specified purposes;*
- (4) the issue by a body corporate of partly paid shares if either the body corporate is incorporated under the law of England or Scotland or the shares are or are to be registered under the law of England or Scotland;*
- (5) the issue by overseas bodies corporate, for the raising or borrowing of money outside Great Britain, or for conversion operations, of securities registered or to be registered in England or Scotland;*
- (6) the issue for any purpose by overseas Governments of securities registered or to be registered in England or Scotland;*
- (7) the circulation in Great Britain of offers for subscription, sale or exchange, to the public or to existing holders, of securities of overseas Governments or bodies corporate or of units under a unit trust scheme not governed by the law of England or Scotland; and*

- (8) *the issue of units under a unit trust scheme either to raise money in Great Britain, or, if the scheme is governed by the law of England or Scotland or the units are or are to be registered in England or Scotland, to raise money outside Great Britain :*

but allow general exemptions for—

- (A) *transactions consisting in the borrowing of money or the issue of securities (except securities issued to capitalise profits or reserves) or units in a unit trust scheme up to an aggregate of £50,000 in any period of twelve calendar months provided that that aggregate is calculated as set out in Article 8 of the Order ;*  
 (B) *borrowings and issues of securities by Building Societies and by Industrial and Provident Societies ;*  
 (C) *issues of shares under certain defined profit sharing schemes ; and*  
 (D) *transactions to which consent has been given by the Ministry of Finance, Northern Ireland.*

## CAPITAL ISSUES EXEMPTIONS ORDER, 1947

S. R. & O., 1947, No. 946

May 21, 1947

Whereas it is provided by paragraphs (1) and (2) of Regulation 6 of the Defence (Finance) Regulations, 1939, that the Treasury may by order grant exemptions from the provisions of those paragraphs :

Now, therefore, the Lords Commissioners of His Majesty's Treasury in pursuance of the said paragraphs hereby make the following order :—

1. There shall be exempted from the provisions of paragraph (1) and (2) of Regulation 6 of the Defence (Finance) Regulations, 1939, any public offer for sale made in England or Scotland of the securities of a body corporate incorporated under the law of either of these countries.

Provided however that this exemption shall not apply where—

- (a) the securities offered are shares or stock, and  
 (b) any of the shares or stock offered, or any other shares or stock, have been issued by that body corporate without the specific consent of the Treasury during the two years immediately preceding the offer.

In this paragraph the expression “stock” does not include debenture stock. [700]

2. This Order may be cited as the Capital Issues Exemptions Order, 1947, and shall come into force on the sixteenth day of June, 1947. [701]

\* \* \* \* \*

## EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

Paragraphs (1) and (2) of Regulation 6 of the Defence (Finance) Regulations, 1939, as substituted by Article 2 of S. R. & O., 1947, No. 944, prohibit the making in England or Scotland of any public offer for sale of securities of a body corporate incorporated under the law of either of those countries without the consent of the Treasury. The Regulation, however, enables the Treasury to make orders granting exemptions to the general prohibition, and this Order provides that Treasury consent will continue to be required only for public offers

for sale in England and Scotland of shares or stock (other than debenture stock) of a body corporate, where that body corporate has within two years previous to the offer made any issue of shares or stock without the specific consent of the Treasury—e.g. by virtue of the exemptions conferred by the Capital Issues Exemptions Orders, 1941 and 1945 (S. R. & O., 1941, No. 648 and S. R. & O., 1945, No. 587) or by virtue of the provisions of Article 8 of the Control of Borrowing Order, 1947 (S. R. & O., 1947, No. 945).

General note.—The word “ paragraph ” in the first line of Article 1, *ante*, should obviously read “ paragraphs.”

Circular 90/47.

To :—County Councils,  
County Borough Councils,  
Metropolitan Borough Councils,  
County District Councils,  
Parish Councils,  
Joint Boards,  
Catchment Boards,  
Certain Joint Committees and  
other Authorities.

MINISTRY OF HEALTH,  
WHITEHALL,  
LONDON, S.W.1.

31st May, 1947

SIR,

## CONTRACTS OF LOCAL AUTHORITIES

### FAIR WAGES CLAUSE

Local Government Act, 1933 : Section 266

London Government Act, 1939 : Section 160

### Standing Orders

I am directed by the Minister of Health to refer to Circular 206/46 of the 16th November, 1946, and to append Model Standing Orders which have been prepared to apply the Fair Wages Resolution passed by the House of Commons on 14th October, 1946, to the contracts of local authorities.

Section 72 (3) of the Housing Act, 1936, requires contracts by local authorities for the erection of houses to contain a fair wages clause “ complying with any resolution of the Commons House of Parliament for the time being in force with respect to contracts of Government Departments.” The Minister understands that some local authorities have already adopted a standing order which does not fully comply with the recent Resolution and he suggests that they should now adopt in substitution therefor new standing orders based on the Model Standing Orders appended hereto, and apply them to all contracts entered into after the date of adoption.

Highway Authorities will observe that the Clause appended to Ministry of Transport Circular No. 605/1 of the 21st April, 1947 is in conformity with the Model Clauses appended hereto, except for minor differences necessary to adapt it to the Standard Conditions of Tender and Contract for Road and Bridge Works. These differences are not considered to be of such importance as to involve any conflict with standing orders which follow these new Model Clauses.

I am, Sir, etc.

\* \* \* \* \*

The Clerk of the Council, or  
The Town Clerk, or  
The Clerk of the Board or Committee.

## MODEL STANDING ORDERS

## FAIR WAGES CLAUSES

11. \*In every written contract for the execution of work or the supply of goods or materials the following clause shall be inserted :—

The contractor shall in respect of all persons employed by him (whether in execution of this contract or otherwise) in every factory, workshop or place occupied or used by him for the execution of the contract comply with the following conditions of the Fair Wages Resolution passed by the House of Commons on the 14th October, 1946, namely :—

1. (a) The contractor shall pay rates of wages and observe hours and conditions of labour not less favourable than those established, for the trade or industry in the district where the work is carried out, by machinery of negotiation or arbitration to which the parties are organisations of employers and trade unions representative respectively of substantial proportions of the employers and workers engaged in the trade or industry in the district.

(b) In the absence of any rates of wages, hours or conditions of labour so established the contractor shall pay rates of wages and observe hours and conditions of labour which are not less favourable than the general level of wages, hours and conditions observed by other employers whose general circumstances in the trade or industry in which the contractor is engaged are similar.

2. The contractor shall recognise the freedom of his workpeople to be members of trade unions.

3. The contractor shall at all times during the continuance of the contract display, for the information of his workpeople, in every factory, workshop or place occupied or used by him for the execution of the contract a copy of the Fair Wages Resolution.\*\*

4. The contractor shall be responsible for the observance of this clause by sub-contractors employed in the execution of the contract, and shall if required notify the Council of the names and addresses of all such sub-contractors.

5. In the event of any question arising as to whether the foregoing conditions of the Fair Wages Resolution are being observed, the question shall, if not otherwise disposed of, be referred by the Minister of Labour and National Service to an independent tribunal for decision.

12. \*\*\*Before entering into a contract for the execution of work or the supply of goods or materials, the Council shall obtain from the contractor

\* This Model Standing Order takes the place of that numbered 11 in the Model Standing Orders issued as an enclosure to Circular 1388 of the 28th March, 1934.

\*\* It will be observed that this requires the display of a copy of the Fair Wages Resolution as required in the case of Government contracts by the Resolution itself. It is suggested that local authorities should adopt this requirement in preference to requiring the display of a copy of their own standing order, to avoid confusion arising in the minds of the workpeople in the case of contractors working for a number of local authorities whose standing orders may vary slightly in form.

Copies of the Resolution for display in factories, etc., may be purchased from His Majesty's Stationery Office, price 2d. each (3d. post free) or 25 copies for 1s. 6d. (1s. 11d. post free).

\*\*\* Local authorities may find that the most convenient means of obtaining this assurance will be to require a declaration from contractors when they submit their tenders.

In some cases this assurance may not be forthcoming from the smaller contractors, whose attention may not have previously been drawn to the new Fair Wages Resolution. In cases where this presents difficulty in placing contracts, the local authority may find it desirable to suspend this standing order without suspending the previous standing order, which contains the main provisions of the Fair Wages Resolution. In such cases the local authority may consider that the position will be sufficiently met by an assurance by the contractor that he has, for the previous three months, observed the conditions of the local authority's previous standing order on the subject or that he will observe the conditions of the new standing order in the future. In some instances both these assurances may be forthcoming.

an assurance that to the best of his knowledge and belief he has complied with the general conditions of the Fair Wages Resolution passed by the House of Commons on the 14th October, 1946, for at least three months immediately preceding the date of the tender.

13. \*In every written contract for the execution of work or the supply of goods or materials the following clauses shall be inserted :—

1. If the contractor at any time or times or from time to time during the continuance of the contract fails to pay to any person or persons employed by him in or about the execution of the contract wages in conformity with the conditions of the Fair Wages Resolution passed by the House of Commons on the 14th October, 1946, the Council may, without in any way prejudicing or affecting any of their rights powers and remedies under the contract in respect of any breach of contract involved, pay to the employee or employees concerned the amount of the difference between the sum or sums (if any) which such employee or employees may have received from the contractor as wages, and the sum or sums which the employee or employees should have received had the contractor performed and observed the said conditions and the Council may recover from the contractor as a debt due to the Council the amount so paid by the Council as aforesaid.

2. The contractor shall keep proper wages books and time sheets, showing the wages paid to and the time worked by the workpeople in his employ in and about the execution of the contract, and such wages books and time sheets shall be produced whenever required for the inspection of any officer authorised by the Council. [702]

\* This Model Standing Order follows the Standard Conditions of Tender and Contract which the Minister of Transport requires to be used in contracts for road and bridge works and local authorities may wish to adopt this further standing order so as to facilitate the enforcement of the conditions of the Fair Wages Resolution in respect of all their contracts.

### Circular 93/47.

MINISTRY OF HEALTH,  
WHITEHALL,  
LONDON, S.W.1.

19th May, 1947.

To : *Housing Authorities,  
County Councils (for information),  
ENGLAND.*

SIR,

### PAYMENT OF HOUSING SUBSIDIES

I am directed by the Minister of Health to state that in order to give some relief to local authorities in the completion of claim forms he has had under consideration a change in the machinery for payment of those Exchequer subsidies under the Housing Acts, the amounts of which are reasonably stable. Accordingly, with the approval of the Treasury, the full amount of those subsidies payable in respect of each year will be paid in two half-yearly payments during that year without submission of a claim by the local authority. This will supersede the system hitherto followed under which two advances on account are made during the year and the final balance is made on receipt of a claim certified by the District Auditor.

The new system will operate in respect of payments due in respect of the period commencing on the 1st April, 1947, and will apply *only* in respect of Exchequer subsidies payable under the following Acts :—

Housing, etc., Act, 1923. Sections 1 (1) (a) and 1 (1) (b).

Housing (Financial Provisions) Act, 1924, Section 2, and Housing Act, 1930, Section 46.

Housing Act, 1936, Sections 105, 106, 107 and 108.

Housing (Financial Provisions) Act, 1938. Sections 1 and 2.



Submission of claim forms for subsidies payable under the above-mentioned provisions will not, therefore, be required in respect of years subsequent to the year 1946-47, but certification by the Chief Financial Officer and the District Auditor as to the continued observance of the statutory and Treasury conditions will be called for every third year commencing with the year ending 31st March, 1950, and a form of return and certificate will at the appropriate time be issued for completion by the Chief Financial Officer and presentation to the District Auditor.

It should be noted that forms of claim for subsidies under all Housing Acts in respect of the year 1946-47 will shortly be issued and these should be completed and presented to the District Auditor for certification in the normal way. The same procedure will apply in future years in respect of subsidies under the remaining housing provisions which are not enumerated above.

An additional copy of the Circular is enclosed for the information of the Chief Financial Officer.

I am, Sir, etc.

\* \* \* \* \*

The Clerk to the Authority.

[703]

*To the Clerk or Treasurer of all*

*Local Authorities*

*Joint Boards*

*Joint Committees*

*Joint Electricity Authorities*

*Port Health Authorities*

*Catchment Boards*

*Drainage Boards*  
*in England and Wales.*

*and County, Town and*

*District Councils*

*Joint Boards*

*Joint Committees*  
*in Scotland.*

TREASURY CHAMBERS,

GREAT GEORGE STREET,  
LONDON, S.W.1.

3rd July, 1947.

## CONTROL OF BORROWING ORDER, 1947

(S. R. & O., 1947, No. 945)

SIR,

### CAPITAL ISSUES CONTROL : BORROWING BY LOCAL AUTHORITIES

1. I am directed by the Lords Commissioners of His Majesty's Treasury to inform you that this Circular consolidates and supersedes Treasury Circulars of 18th November, 1944, 25th February, 1946 and 29th March, 1947.

### RENEWAL AND REPLACEMENT OF MORTGAGES, ETC.

2. Consent for the purpose of the Control of Borrowing Order, 1947 is hereby given, with effect until 31st March, 1948 in the case of Local Authorities in England and Wales, and until 15th May, 1948 in the case of Local Authorities in Scotland, and subject to the conditions set out in paragraph 3 below, to the renewal, replacement or other amendment of mortgages without application for specific Treasury consent.

3. The conditions of this general consent are as follows :—

- (a) For the purpose of this Circular mortgages include a local bond, corporation bond or any similar security not marketable or quoted on any stock exchange, but do not include bills, promissory notes or deposit receipts, and replacement means replacement only by other mortgages as here defined.

- (b) No mortgage shall be issued or renewed on terms providing for repayment before a date 7 years after the date of issue or renewal ; except that—
- (i) It will be permissible to issue mortgages repayable by equal instalments of capital at regular intervals or by an annuity of constant amount, provided that the full currency of the mortgage or renewal is not less than 7 years.
  - (ii) The period of any mortgage will not be regarded as determined by the inclusion of a "Stress Clause" under which the lender is entitled to premature repayment in an emergency.
  - (iii) Mortgages may be renewed or replaced for a shorter period than 7 years, if the terms of any loan sanctions identifiable as specifically governing those mortgages would not permit of a longer renewal or borrowing.
- (c) All new or renewed mortgages shall be made for a definite term, and it shall not be a provision of any new or renewed mortgage, either that it may continue to run on at notice after reaching the stipulated date for repayment or renewal or that it may so run during any part of its currency after the first 7 years.

4. The general consent given in the preceding paragraphs relates only to the renewal, replacement or other amendment of mortgage debt. New borrowing on mortgage and all borrowing by way of stock, bills, promissory notes or deposit receipts will continue to be the subject of specific Treasury consent, except in so far as other provision is made in paragraphs 6 and 7 of this Circular. It is the intention of the Treasury to specify conditions (b) and (c) of the preceding paragraph in any consent to new mortgage borrowing.

5. For the purpose of this Circular, deposit receipts will not be regarded as mortgages. Consent is hereby given, however, to the replacement by mortgages (as defined in paragraph 3 above and on the conditions prescribed therein) of deposit receipts issued (a) before the 1st June, 1943 and (b) at any time under the Capital Issues Exemption Orders 1941 and 1945, or under Article 8 (1) of the Control of Borrowing Order, 1947.

#### EXEMPT TRANSACTIONS

6. Under the provisions of the Control of Borrowing Order, 1947 (S. R. & O., 1947, No. 945), Treasury consent will not be required to borrowing by Local Authorities if the transaction is exempt under any one of the following Articles :—

- (a) *Article 8 (1) of the Order.* Subject to the provisions of this Article, borrowing as defined in Part 1 of the Order " if the amount involved in the transaction, together with the amount involved in all previous transactions by the same person in the previous twelve months, being transactions which are to be taken into account in accordance with paragraph (2) of this Article, does not exceed £50,000."

The attention of Local Authorities is also drawn to the provisos to Article 8 (1) of the Order, the broad effect of which is that in counting previous transactions for the purpose of the exemption, the borrower can ignore replacement transactions or postponements where no new money is raised, and similarly, loans raised and subsequently repaid within the twelve months period, can be disregarded.

- (b) *Article 1 (2) (c) of the Order.* "Borrowing by a local authority for the sole purpose of defraying expenditure (including the payment of sums due by them to meet the expenses of other authorities) pending the receipt of revenues receivable by them in respect of the period of account in which that expenditure is chargeable, so long as—

- (i) the expenditure is not capital expenditure ; and
- (ii) the money is repayable not later than one month after the determination of that period of account ; and
- (iii) the amount outstanding at any one time does not exceed one half of the total revenues received or receivable in respect of that period of account."

As this provision relates to borrowing pending the receipt of revenues, the effect of the limitation to 50% of total revenues received or receivable is that, until such time as 50% of receivable revenue has been received, the exemption covers borrowing 50% of receivable revenue. Thereafter it covers borrowing up to, but not exceeding, the balance of receivable revenues. For example, if the total revenues receivable in the year are £1 million, the exemption allows borrowing not exceeding £500,000 until £500,000 has been received, thereafter the maximum amount borrowed under this exemption and outstanding must never exceed the balance of revenue still outstanding.

- (c) *Article 1 (2) (f) of the Order.* "Borrowing from a department of His Majesty's Government in the United Kingdom."

*Note.* It should be noted that Article 12 (2) of the Order provides that any consent granted by the Treasury under Regulation 6 of the Defence (Finance) Regulations, 1939 shall have effect as if it had been granted under the corresponding provision of the new Order.

#### TEMPORARY BORROWING

7. As regards temporary borrowing by Local Authorities, other than temporary borrowing referred to in paragraph 6 (b) above, I am to inform you that :—

- (i) Where Treasury consent is given to an issue of capital by a specific method for a specific purpose, that consent may be taken to cover any preliminary temporary borrowing (otherwise than by way of bills or promissory notes) which is *necessary* for that purpose provided that such temporary borrowing is completed and the substantive issue of capital is effected before the expiration of the period of validity of the Treasury consent (or any extension thereof).
- (ii) Where an existing mortgage is replaced under the general consent accorded to Local Authorities by paragraph 2 of this circular, such general consent may be taken to cover any preliminary temporary borrowing (other than by way of bills or promissory notes) which is *necessary* for that purpose, provided that in respect of each specific transaction such temporary borrowing is completed and the new mortgage issued within 6 months from the date on which the existing mortgage terminates or is terminated. This provision may also be applied in the case of deposit receipts replaced under the general consent accorded by paragraph 5 above.

The concession set out in this paragraph is made on the understanding that Local Authorities have recourse to such temporary borrowing only where they cannot reasonably arrange a permanent loan without so doing. For example an Authority, having obtained specific consent to the raising of a long-term loan or intending to replace an existing mortgage under the

general consent granted by paragraph 2 of this Circular, may find that some latitude of time is necessary to determine the exact amount of the permanent loan.

### "FROZEN" SANCTIONS

8. Paragraph 3 of Treasury Circular of 8th August, 1946 confirmed by arrangement originally notified in paragraph 7 (a) of Treasury Circular of 24th November, 1939, whereby a new reference to the appropriate sanctioning Department was required before the exercise of a borrowing power in respect of a loan sanction given before 13th September, 1939, or in the case of Local Authorities in Scotland, before 5th October, 1939. In the Circular of 24th November, 1939, but not in that of 8th August, 1946, loan sanctions obtained before the above mentioned dates in respect of water supplies, hospitals and fire-brigades were specifically exempted from this requirement in view of the urgent need for extensions of these services at that time. The justification for this differential treatment disappeared with the end of the war time emergency, and a new loan sanction or Departmental consent is now required for borrowing in these circumstances.

### GENERAL

9. In the view of Their Lordships, the present level of interest rates affords a favourable opportunity for Local Authorities to spread maturing capital obligations over a longer period of years and in particular to reduce the volume of mortgages maturing within 7 years. The borrowing period should whenever possible exceed 7 years, which should be regarded as the minimum.

10. My Lords remind your Authority of the need to consider carefully before renewing maturing debt or replacing it by a fresh borrowing, how far it is possible, having regard to prospective commitments, for the maturing debt to be repaid out of internal funds which can be made applicable.

11. Nothing in this Circular affects the existing requirements regarding other consents which may be necessary, *e.g.* from other Departments or from the Treasury, under other Regulations.

12. Questions of interpretation should be addressed to the Assistant Secretary, Home Finance Division, H.M. Treasury, Great George Street, S.W.1.

I am, Sir, etc.

\* \* \* \* \*

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[704]

### CASES

*Local Government—Audit—Powers of district auditor—Fraud by company—Surcharge on managing director—Local Government Act, 1933 (c. 51), s. 228.*

A company overstated the time it had spent on work for a local authority, and, as a result, large overpayments were made by the authority. The district auditor estimated the amount of loss to the authority, and purported to surcharge therewith the managing director of the company :—

*Held* : the district auditor had no power to surcharge anyone who was not a member, officer or servant of the authority whose accounts were being audited.—*Re DISTRICT AUDITOR'S DECISION, DICKSON'S APPEAL*, [1947] 2 All E. R. 47 ; *sub nom. DICKSON v. HURLE-HOBBS*, 177 L. T. 105 ; 111 J. P. 488 ; 63 T. L. R. 341 ; 45 L. G. R. 400. [705]

# FIRE PROTECTION

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## STATUTES

### FIRE SERVICES ACT, 1947

(10 & 11 Geo. 6, c. 41)

#### PRELIMINARY NOTE

The Fire Services Act, 1947, received the Royal Assent on July 31, 1947, and for England and Wales the appointed day, on which the commencement of its principal provisions depends, is April 1, 1948 (S.I. 1948 No. 325).

The Act is an important piece of legislation from several points of view. In the first place, it re-establishes on a permanent peace-time basis a local government service upon which the exigencies of war had imposed a high degree of centralisation. It has been welcomed in some quarters as the first attempt at "de-nationalisation," though in fact it merely transfers fire administration from one form of public ownership to another. Secondly, it is to a large extent an agreed measure. This statement remains true despite the existence of a number of basic principles upon which the representatives of local government organisations, and particularly those concerned on behalf of the smaller authorities, were unable to reach agreement with the Government.

For a proper appreciation of the significance of the Act, it is necessary to bear in mind the history of fire administration during the last few years. This history falls into three well-defined periods, which will be dealt with separately.

Before the passing of the Fire Brigades Act, 1938 (31 Halsbury's Statutes 585), the law governing the organisation of fire services outside London was completely out of touch with modern requirements. There was no general legislation to make the provision of fire cover compulsory, and such services as existed were provided either under local legislation or under a series of fragmentary and discretionary enactments. Boroughs and urban districts usually relied on the provisions of ss. 32 and 33 of the Town Police Clauses Act, 1847 (13 Halsbury's Statutes 603, 604), which were extended to their areas by s. 171 of the Public Health Act, 1875 (13 Halsbury's Statutes 696). Rural districts could also acquire these powers by an order made under s. 276 of the latter Act. Other very limited powers existed under s. 29 of the Poor Law Amendment Act, 1867 (10 Halsbury's Statutes 557), and the adoptive Lighting and Watching Act, 1833 (8 Halsbury's Statutes 1186).

In these circumstances, it is not surprising that the actual organisation of fire brigades showed considerable diversity. S. 2 of the Police Act, 1893 (12 Halsbury's Statutes 855), allowed boroughs to delegate their powers under the Act of 1847, *supra*, to their watch committees and to employ constables wholly or partly as firemen. Fire services, therefore, might or might not be administered in conjunction with the police. In this connection it is of some importance to note that police firemen received their pensions under the Police Pensions Acts, 1921 and 1926 (12 Halsbury's Statutes 873, 897), while professional non-police firemen fell within the provisions of the Fire Brigade Pensions Acts, 1925 and 1929 (13 Halsbury's Statutes 1095, 1194). Another classification, which cut across the first, was into professional and part-time brigades. Finally, there were volunteer brigades and a number of private fire forces.

In London, however, the system was much more coherent. Under the provisions of the Metropolitan Fire Brigade Act, 1865 (11 Halsbury's Statutes 997), the Metropolitan Board of Works became the sole fire authority, with a clear duty to extinguish fires and protect life and property. Its functions were transferred to the London County Council by s. 40 (8) of the Local Government Act, 1888 (10 Halsbury's Statutes 719), and the Metropolitan Fire Brigade (late the London Fire Brigade) was able to become a pioneer in the efficient organisation of fire services.

The second period begins with the passing of the Fire Brigades Act, 1938 (31 Halsbury's Statutes 585), which to a large extent followed the recommendations of the Departmental Committee on Fire Brigade Services under the chairmanship of Lord Riverdale, whose report was issued in 1936 (Cmd. 5224). This Committee was largely preoccupied with the measures which would be necessary to deal effectively with fires caused by aerial attack, and it is a matter of history that the outbreak of war in 1939 prevented the Act of 1938 from being given a fair trial.

The councils of boroughs and urban and rural districts were constituted fire authorities, to the exclusion of parish councils, parish meetings and inspectors appointed under the Lighting and Watching Act, 1833, *ante*. The new fire authorities were placed under a statutory obligation to secure the provision of adequate services for their respective districts, and were given a variety of powers to enable them to do so. Existing powers to charge owners and occupiers of property for fire services rendered were abolished. The Act did not, however, give effect to the Committee's recommendation that fire authorities should be given a special Exchequer grant attributable to their functions as such.

Elaborate provision was made to secure the efficient execution of the duties of fire authorities. In view of the simplified but basically similar machinery established by the present Act, however, it is not necessary to discuss this.

So far as London was concerned, it is only necessary to add that, except for certain sections conferring additional powers, the provisions of the Act did not extend to the London Fire Brigade, and the Metropolitan Fire Brigade Act, 1865, *supra*, continued to govern that brigade.

A new period in the history of British fire administration opened with the Second World War, when it soon became apparent that the existing structure of the fire services was incapable of dealing with the results of large-scale enemy attack, despite the extensive provision of emergency appliances from central resources and the establishment in each district of an Auxiliary Fire Service. In 1941, therefore, the National Fire Service (General) Regulations, 1941 (S. R. & O., 1941, No. 1134; 34 Halsbury's Statutes 227), made under powers conferred by the Fire Services (Emergency Provisions) Act, 1941 (34 Halsbury's Statutes 223), suspended all the fire powers and duties of local authorities and transferred those functions to a new national body to be known as the National Fire Service. Detailed provision was made by these and other regulations for such matters as the establishment of the new organisation, the preservation of pension rights, and the transfer of property and personnel.

The former fire authorities collaborated wholeheartedly to bring this massive re-organisation into effect and paid a proportion of their fire expenditure of a standard year towards the cost of the National Fire Service, being sustained by an official assurance that, when the period of national emergency had ended, their powers would be restored. The present Act constitutes the legislative fulfilment of that promise, though the new fire authorities are different from the old.

With the passing of the Fire Services Act, 1947, on July 31, 1947, the third period of development drew to a close. Nevertheless, it should be noted at the outset that the new Act is not in itself a complete charter for fire administration, though some progress has been made in the direction of codification by the repeal of the Fire Brigade Pensions Acts, 1925 and 1929, the Fire Brigades Act, 1938, and most of the Metropolitan Fire Brigade Act, 1865.

The main features of the new Act may conveniently be considered under ten headings:—

(i) *The new fire authorities*.—The structure of the future fire organisation is established by s. 4 of the Act, which provides that the basic fire authorities are to be the councils of counties and county boroughs to the exclusion of the county district councils. Provision is made by s. 5 for voluntary combination schemes to combine the areas of two or more fire authorities. These are subject to the approval of the Secretary of State. The general effect of a combination scheme is that all the powers



and duties of the constituent authorities will pass to the combined body, which will then become the fire authority for the whole area concerned. No provision is made for the combination of *parts* of the areas of fire authorities.

The Secretary of State is given power to make combination schemes by order in case of default, although counties and county boroughs having populations of 100,000 or upwards may not be forced, against their consent, into combination schemes which would place them in a minority. In any event, the fire authorities concerned may insist upon a public inquiry before the order is made, and draft schemes are subject to negative resolution of either House of Parliament (s. 6).

Ss. 8 and 9 make provision respectively for the constitution and powers of combined fire authorities, and the amendment and revocation of combination schemes.

The existing procedure of combining for fire administration purposes by appointing a joint committee under the general powers conferred by s. 91 of the Local Government Act, 1933 (26 Halsbury's Statutes 355), is made subject to the approval of the Secretary of State (s. 7).

The Fifth Schedule to the Act empowers the Secretary of State to make regulations providing for, *inter alia*, the transfer of National Fire Service employees to the new fire authorities and the vesting in those authorities of National Fire Service property, rights and liabilities and property vested in non-county boroughs and urban and rural districts but at present used for National Fire Service purposes. Paragraph 8 of the Schedule is of great importance to county district councils, being apparently designed to avoid the difficulties which have arisen under the corresponding provisions of s. 1 (3) (b) of the Police Act, 1946 (39 Halsbury's Statutes 618).

(ii) *Powers and duties.*—The general duties of each fire authority are prescribed by s. 1 of the Act. They include the training of personnel, making arrangements for dealing with calls, obtaining information about fire risks, water supplies and other material circumstances, giving advice about fire prevention and taking measures to prevent or mitigate damage to property. A number of additional powers supplemental to the general functions prescribed by s. 1 are conferred by s. 3. S. 8 deals with the powers of combined fire authorities, while ss. 13 to 16 are concerned with the supply of water for fire-fighting. The first of these provisions casts a general duty on the fire authorities to take all reasonable measures to ensure adequate water supplies. They may make agreements with statutory water undertakers for this purpose (s. 14), and powers to compel the making of agreements are held in reserve. S. 15 is concerned with the use of water which is not under the control of statutory water undertakers, while the powers of firemen and police officers in connection with extinguishing fires, including powers to secure the maintenance of an adequate water supply, are set out in s. 30.

(iii) *Arrangements with other fire authorities.*—These fall into two classes: reinforcement schemes for the rendering of mutual assistance under s. 2, and contractual arrangements for fire cover under s. 12. The difference between the two is that s. 2 is obviously intended to deal with fires occurring in remote parts of a fire authority's area (which the equipment of an adjoining fire authority can reach more easily) and large fires demanding a greater concentration of equipment than a single authority possesses or can make available; s. 12, on the other hand, allows a fire authority to relieve itself by contract of all or any of its functions in relation to the whole or part of its area.

In each case, the Secretary of State is given default powers to make schemes, but only under s. 12 is he bound to hold a local inquiry in case of objection by one of the fire authorities concerned. Again, arrangements under s. 12 may make provision with respect to the "terms as to payments or otherwise" on which the services are to be provided, while s. 2 merely authorises an apportionment of the "expenses incurred in taking measures to secure the efficient operation of the scheme."

In addition to these arrangements between fire authorities, both ss. 2 and 12 authorise fire authorities to enlist and pay for the assistance of private brigades. Such contracts under s. 2, unlike the others under that section and those under s. 12, are not subject to the approval of the Secretary of State. With regard to contracts with private brigades under s. 12, it is to be noted that the provisions of sub-ss. (2) to (5) of that section do not apply in such cases.

(iv) *Internal organisation of fire authorities.*—Under s. 20, county fire authorities are required to constitute fire brigade committees to deal with their functions under the Act. In the Bill as first drafted, this obligation also extended to county



boroughs, but its scope was reduced as a result of protests by organisations representing those authorities.

So far as county councils are concerned, detailed provisions are set out whereby the councils of county districts will be entitled to appoint representatives to the county fire brigade committees (s. 20 (4)). This will be done by means of management schemes prepared by the county councils and sent for approval to the Secretary of State together with the observations of the district councils. The First Schedule to the present Act sets out detailed provisions as to management schemes, and the Second Schedule provides for the application of these provisions to combined fire authorities.

(v) *Staff arrangements*.—The Secretary of State may make regulations as to the method of appointment of chief fire officers and the procedure for appointment of other employees of fire authorities (s. 18). The regulations may also prescribe the qualifications for appointment to various ranks and the requirements for promotion. When explaining this provision to the House of Commons (H. of C. Official Report, S.C.B., May 13, 1947, cols. 258 *et seq.*), the Home Secretary stated that the chief objects were :—

- (a) to ensure uniformity in nomenclature throughout the service ;
- (b) to specify the qualifications relating to each rank ; and
- (c) to ensure that fire authorities should make appointments themselves, or at any rate reserve the right of ratification, instead of leaving the matter in the hands of the chief officers.

The establishments of fire personnel and of stations and equipment of all kinds are to be set out in establishment schemes made by the fire authorities and approved by the Secretary of State, who has default powers if no scheme has been submitted for approval before a specified date or the scheme is considered unsatisfactory. In the latter case, however, the fire authority may insist upon the holding of a public inquiry (s. 19). The First and Second Schedules also provide for the application of these provisions to counties and to combined authorities respectively, the basic intention being to ensure that county districts have an adequate voice in the preparation of the schemes.

(vi) *Training and equipment*.—S. 1 (1) (a) of the Act makes it the duty of each fire authority to provide equipment sufficient to meet all normal requirements, and and s. 1 (1) (b) imposes a similar duty to secure the efficient training of an authority's fire personnel.

These general provisions are followed up by later provisions of the Act. Under s. 23 the Secretary of State may establish a central training institution managed by a Board consisting, as to one half of its members, of his nominees, and, as to the remainder, of persons appointed by the County Councils Association and the Association of Municipal Corporations. He may also set up one or more local training centres. The latter power is also enjoyed by the fire authorities themselves, who may establish and maintain training centres without ministerial consent. The Secretary of State may also, after consultation with the Central Fire Brigades Advisory Council, established under s. 29 (see under "Central control of fire authorities," *post*) make regulations as to standards of training and equipment (s. 21), while the section that follows empowers him to provide equipment for purchase by fire authorities. The appointment of Government fire brigade inspectors is also authorised (s. 24).

(vii) *Conditions of service*.—S. 17 begins by empowering the Secretary of State to make regulations as to the conditions of service of persons employed as members of fire brigades. Provision is then made for these regulations to give effect to approved recommendations made by negotiating bodies representing the interests of employers and employees, the section envisaging the establishment of one or more joint industrial councils to have general superintendence over the wages, discipline, duties and general conditions of service of fire employees.

(viii) *Pensions*.—The distinction between police firemen and other professional firemen and the different pension provisions applicable to each class will disappear in consequence of s. 32 of the Act, whereby no member of a police force is to be employed as a member of a fire brigade.

Provision is made for the establishment of a new Firemen's Pension Scheme to cover all members of fire brigades maintained in pursuance of the Act who retire or die on or after "the appointed day" (s. 26). The Scheme may be brought into operation by order of the Secretary of State. By sub-ss. (3) of the same section,

the maximum pension is only to be paid to persons who have had thirty years or more of such service as is applicable for the purpose of the Scheme, and no pension is to be payable unless one of four conditions is satisfied :

1. Twenty-five years' service ; or
2. Retirement caused through incapacity occasioned by injury received in the execution of duty ; or
3. Retirement caused by incapacity resulting from other specified causes after not less than ten years' service ; or
4. Retirement on the ground of age.

The Firemen's Pension Scheme is, by s. 27, to supersede all other statutory schemes, except that in certain cases the provisions of existing statutory schemes, if certified to be not less favourable, may be applied.

In addition, there are supplementary provisions for the preservation of pensions (s. 28), while paragraphs 10 to 13 of the Fifth Schedule set out the transitional provisions whereby the pension functions of county district councils are to be transferred to the new fire authorities.

(ix) *Financial provisions.*—S. 25, which was perhaps the most controversial provision of the Bill, provides for an Exchequer grant to fire authorities of amounts not exceeding 25 per cent. of the expenditure incurred. This is an innovation, although, as mentioned above, the introduction of a specific grant was recommended by the Riverdale Committee in 1936. Government financial assistance to local authorities' fire brigades was formerly limited to the consolidated block grants, which are in aid of local government services generally, introduced by the Local Government Act, 1929 (10 Halsbury's Statutes 883).

The regulations governing the grant may provide for the deduction therefrom of amounts apportioned to fire authorities in respect of training services provided by the Secretary of State under s. 23 (see under "Training and equipment," *ante*).

(x) *Central control of fire authorities.*—The degree of control exercised by the Secretary of State over the detailed activities of fire authorities is close, and has been claimed in some quarters to be disproportionate to the amount of the Exchequer grant. It has been said, however, that the extent of the control now is no greater than under the Act of 1938, although exercised in a different manner. Under the earlier Act, central control was exercised in a somewhat complicated manner through the agency of a Fire Service Commission and Fire Service Boards. Under the present Act, however, the Secretary of State will act directly, subject to the activities of the Central Fire Brigades Advisory Council.

This Council, whose constitution is described in s. 29 of the Act, will consist of a chairman appointed by the Secretary of State and permanent members representing the interests of fire authorities and employees, together with permanent or *ad hoc* members appointed for their special qualifications. The inclusion of representatives of water undertakings and county district councils is important (see notes to s. 29). The Secretary of State is required to consult the Advisory Council under ss. 1 (3), 14 (6), 18 and 21.

In general terms, the establishment of the Council—which is strongly reminiscent of the Police Council—may be regarded as an attempt to modify the incidence of central control by enabling the views of fire authorities and their employees to find expression at a high level. The Council's functions, however, are merely advisory, and the Secretary of State is not bound to give effect even to the unanimous recommendation of its members.

A number of the functions conferred upon the Secretary of State have already been mentioned. The following is a list of his regulation-making and similar powers :—

- S. 1 (3)—Standards of efficiency ;
- S. 11—Adaptation of local Acts giving special powers or duties to fire personnel ;
- S. 14 (6)—Uniformity in hydrants, etc. (after consultation with the Central Fire Brigades Advisory Council) ;
- S. 17—Conditions of service ;
- S. 18—Appointments and promotions (after consultation with the Central Fire Brigades Advisory Council) ;
- S. 21—Standards of training and equipment (after consultation with the Central Fire Brigades Advisory Council) ;
- S. 25—Grants to fire authorities (with the consent of the Treasury) ;
- S. 26—Firemen's Pension Scheme ; and

Sched. V.—Transitional provisions (after consultation with associations representing local authorities).

All regulations, and the orders under ss. 11 and 26, are subject to negative resolution by either House of Parliament (s. 35 (1)). [706]

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*An Act to make further provision for fire services in Great Britain, to transfer fire-fighting functions from the National Fire Service to fire brigades maintained by the councils of counties and county boroughs ; to provide for the combination of areas for fire service purposes ; to make further provision for pensions and other awards in respects of persons employed in connection with the provision of fire services ; and for purposes connected with the matters aforesaid. [707]*  
[31st July, 1947.]

*Provision of fire services*

**1. Provision of fire services.**—(1) It shall be the duty of every fire authority in Great Britain to make provision for fire-fighting purposes, and in particular every fire authority shall secure—

- (a) the services for their area of such a fire brigade and such equipment as may be necessary to meet efficiently all normal requirements ;
- (b) the efficient training of the members of the fire brigade ;
- (c) efficient arrangements for dealing with calls for the assistance of the fire brigade in case of fire and for summoning members of the fire brigade ;
- (d) efficient arrangements for obtaining, by inspection or otherwise, information required for fire-fighting purposes with respect to the character of the buildings and other property in the area of the fire authority, the available water supplies and the means of access thereto, and other material local circumstances ;
- (e) efficient arrangements for ensuring that reasonable steps are taken to prevent or mitigate damage to property resulting from measures taken in dealing with fires in the area of the fire authority ;
- (f) efficient arrangements for the giving, when requested, of advice in respect of buildings and other property in the area of the fire authority as to fire prevention, restricting the spread of fires, and means of escape in case of fire. [708]

(2) For the purposes of such arrangements as are mentioned in paragraph (d) of the last foregoing subsection, any member of a fire brigade maintained in pursuance of this Act shall, if authorised in writing by the authority maintaining the brigade, have the like powers of entering premises as are conferred upon authorised officers of councils by section two hundred and eighty-seven of the Public Health Act, 1936 ; and accordingly that Act shall have effect as if the references in that section to an authorised officer of a council included references to a member of a fire brigade authorised as aforesaid, and as if among the purposes specified in subsection (1) of that section there were included the purposes of carrying out such arrangements as aforesaid. [709]

(3) The Secretary of State may, after consultation with the Central Fire Brigades Advisory Council constituted under this Act, make regulations

prescribing standards of efficiency with respect to any of the matters mentioned in subsection (1) of this section, and the standards may vary according to the requirements of, and the facilities available in, different kinds of locality; and any fire authority whose services are of a standard so prescribed shall, as respects the matter for which the standard is prescribed, be deemed to have complied with the provisions of subsection (1) of this section. [710]

*Changes effected.*—Sub-s. (1), *ante*, reproduces the provisions of s. 1 (1) of the Fire Brigades Act, 1938 (31 Halsbury's Statutes 586), except that (i) the equipment referred to in the present para. (a) is defined more widely than in the Act of 1938; (ii) arrangements are to be made for "dealing with calls" instead of "enabling persons to call" fire brigades; (iii) the obligation to make arrangements for manning the fire-engines no longer appears as it is considered redundant in view of the general duty to make provision for fire-fighting purposes under s. 1 (1) and of making available the services of a fire brigade under s. 1 (1) (a); and (iv) the duties of preventing and mitigating damage and of giving advice on fire prevention imposed by the present paras. (e) and (f) respectively are new. Sub-s. (2) reproduces with verbal modifications s. 1 (4) of the 1938 Act, while sub-s. 3 corresponds to s. 1 (2) of that Act, subject to the addition of the reference to the Central Fire Brigades Advisory Council and the substitution of regulations for orders.

*Definitions.*—"Fire authorities" are the councils of counties and county boroughs (s. 4, *post*) or are constituted for combined areas by schemes (s. 5 (2) (a), *post*). See s. 38 (1), *post*. Under s. 1 (1) of the Fire Brigades Act, 1938 (31 Halsbury's Statutes 586), the councils of county boroughs and county districts were fire authorities, "county districts" comprising non-county boroughs, urban districts and rural districts (Local Government Act, 1933, s. 305; 26 Halsbury's Statutes 466).

"Fire fighting purposes" comprise extinguishing fires and protecting life and property in case of fire (s. 38 (1), *post*).

As to "equipment," see s. 38 (1), *post*.

*Liability of fire authorities.*—Whether mere neglect to fulfil a statutory duty gives a right of action for damages thereby caused depends on the object and language of the particular statute (*Atkinson v. Newcastle and Gateshead Waterworks Co.* (1877), 2 Ex. D. 441, C. A.). In general, an action only lies when the statute confers a private right and does not simply impose a duty owed to the public at large (see *Groves v. Lord Wimborne*, [1898] 2 Q. B. 402). Authorities exercising statutory powers and duties must also use all reasonable diligence to prevent their operations from causing damage to others (*Manchester Corp'n. v. Farnworth*, [1930] A. C. 171).

Where a local authority, in fulfilment of a duty under s. 66 of the Public Health Act, 1875, had affixed to the wall of a street a plate intended to indicate the position of a fire plug in the water main but in fact giving a wrong indication of the plug's position with the result that, on the arrival of a fire brigade to deal with a fire, considerable delay was occasioned with consequent damage, the Court of Appeal held that the defendant authority were liable in damages to the plaintiffs for the additional loss sustained (*Dawson & Co. v. Bingley Urban Council*, [1911] 2 K. B. 149).

Further, the general principle has been established that statutory authority is no defence to an action for negligence, unless the particular act alleged to be negligent is authorised (see 23 Halsbury's Laws (2nd Edn.) 704, and cases there cited).

After standards of efficiency have been laid down by regulation under sub-s. (3), *ante*, the attaining of those standards fulfils a local authority's statutory duty under sub-s. (1); it is to be observed, however, that the provisions of sub-s. (3) extend only to the local authority's statutory duty and not to any possible liability of members of a fire brigade under the ordinary law of negligence.

*Securing the services of a fire brigade.*—Note that the obligation of fire authorities is merely to "make provision" for fire-fighting purposes and to "secure the services" for their area of a fire brigade, etc.; they are under no obligation to furnish the services themselves. Accordingly, as under the 1938 Act, fire authorities may discharge their obligations either:

- (a) by providing the services themselves;
- (b) by making arrangements with another fire authority or other fire authorities (s. 12 (1), *post*); or
- (c) by making arrangements with "other persons," i.e., independent contractors, not themselves a fire authority, or a private brigade run, for instance, in connection with a local works or colliery (s. 12 (1)), but in both cases (b) and (c) the approval of the Secretary of State is required (s. 12 (1), and see note thereto).

*Calling the fire brigade.*—Fire authorities are not required to make themselves generally responsible for the efficiency of arrangements for calling the fire brigade. Fire brigades have no control over the telephone system and there is no suggestion that they are required to instal fire alarms everywhere. The primary obligation of fire authorities is to deal efficiently with calls, though they should in suitable cases provide posts or some other system of call (see H. of C. Official Report, S.C.B., April 22, 1947, col. 4).

*Preventing and mitigating damage.*—Fire authorities should regard it as part of their duty to make a comprehensive study of their areas, particularly in training fire personnel, and to have regard to the appropriate way in which premises subject to fire shall be tackled so as to prevent as far as possible the infliction of unnecessary damage. In addition, first aid salvage should be regarded as part of the normal duty of the fire-fighting services (see H. of C. Official Report, S.C.B., April 22, 1947, col. 10).

"First-aid" salvage should be distinguished from salvage in the wider sense of removing property from premises after the extinction of fires. This function does not appear to be given

to fire authorities by the Act and would normally be the duty of a Salvage Corps where one exists.

*Powers of entering premises.*—S. 287 of the Public Health Act, 1936 (29 Halsbury's Statutes 507), gives duly authorised officers of councils the right, on producing their authority, to enter any premises at all reasonable hours for the purposes of the section, subject to a proviso that admission to any premises not being a factory, workshop, or workplace is not to be demanded as of right unless twenty-four hours' notice of the intended entry has been given to the occupier. Provision is made for the issue of warrants by justices of the peace authorising entry upon premises, by force if need be, subject to the conditions specified in the section. By the present section this procedure is made applicable to the obtaining of information required for fire-fighting purposes in connection with the character of the buildings, available water supplies, means of access thereto and other material local circumstances. A similar right of entry was previously, by s. 1 (4) of the Fire Brigades Act, 1938 (31 Halsbury's Statutes 587), conferred not on "a member of a fire brigade" but on "an officer of a fire authority." Authorisation may be general or special (Public Health Act, 1936, s. 343 (1); 29 Halsbury's Statutes 536).

*Regulations.*—Up to the time of going to press, no regulations under sub-s. (3), *ante*, had been made. Any such regulations would require to be laid before Parliament (s. 35 (1), *post*).

**2. Arrangements for mutual assistance.**—(1) It shall be the duty of fire authorities, so far as practicable, to join in the making of schemes (hereafter in this section referred to as "reinforcement schemes") for securing the rendering of mutual assistance for the purpose of dealing with fires occurring in the areas of authorities participating in a reinforcement scheme where either—

(a) it is necessary to supplement the services provided under the last foregoing section by the authority in whose area the fire occurs, or

(b) reinforcements at any fire can be more readily obtained from the resources of other authorities participating in the scheme than from those of the authority in whose area the fire occurs. [711]

(2) Any reinforcement scheme made under the last foregoing subsection shall be notified to the Secretary of State, and the Secretary of State may direct that any such scheme notified to him shall have effect subject to such modifications as may be specified in the directions. [712]

(3) Where in the case of any fire authorities no reinforcement scheme has been made, or it appears to the Secretary of State that any such scheme is no longer satisfactory, the Secretary of State may, after affording an opportunity to all fire authorities appearing to him to be concerned to make representations to him, make a reinforcement scheme for the authorities in question. [713]

(4) A reinforcement scheme may make provision for apportioning between the fire authorities concerned, in such proportions as may be specified by or under the scheme, expenses incurred in taking measures to secure the efficient operation of the scheme. [714]

(5) A reinforcement scheme may contain such provisions requiring uniformity of equipment as appear to the Secretary of State to be necessary for the purpose of ensuring that the fire brigades affected will be able to render efficient assistance in pursuance of the scheme. [715]

(6) Where a reinforcement scheme has come into operation, it shall be the duty of the fire authorities to whom the scheme applies to carry it into effect. [716]

(7) Any reinforcement scheme may be varied by a subsequent such scheme made in the like manner and subject to the like provisions. [717]

(8) A fire authority may enter into arrangements with persons (not being other fire authorities) who maintain fire brigades to secure, on such terms as to payment or otherwise as may be provided by or under the arrangements, the provision by those persons of assistance for the purpose of dealing with fires occurring in the area of the authority where either—

(a) it is necessary to supplement the services provided by the authority under the last foregoing section, or

(b) reinforcements at any fire occurring in the area of the authority can be more readily obtained from the resources of the said persons than from the resources of the authority. [718]



(9) The Secretary of State may, for the purposes of his functions under this section, hold such public local inquiries as he thinks fit. [719]

*Changes effected.*—This section develops the principle of co-operation between fire authorities underlying s. 1 (5) of the Fire Brigades Act, 1938 (31 Halsbury's Statutes 587), and the co-ordination provisions of ss. 8 and 9 of the same Act, but, *inter alia*, substitutes for payments for assistance given the possibility of apportioning expenses incurred in measures to secure the efficient operation of reinforcement schemes. Again, the Secretary of State is to be notified directly of reinforcement schemes, and is empowered himself to effect modifications thereof and to initiate and make such schemes where none has been made by the fire authorities in question or where any schemes so made are no longer satisfactory.

For further comments on this section, see the Preliminary Note, *ante*.

*Persons (not being other fire authorities) who maintain fire brigades.*—This refers to the private fire brigades maintained not for the service of the public at large, but by individuals or firms for the protection of their own property, *e.g.*, the Port Sunlight Brigade in Cheshire, maintained by Lever Brothers and Unilever, Ltd. and the Mines Rescue Organisation of Durham and Northumberland. Note the limited number of cases in which arrangements with private fire brigades are permitted under this section and also the wider powers conferred by s. 12, *post*.

*Public local inquiries.*—S. 290 (2), (3) and (5) of the Local Government Act, 1933 (26 Halsbury's Statutes 459), applies to any inquiry held under this section (s. 33 (2), *post*, and see note thereto). The Under-Secretary of State for the Home Department said in Standing Committee of the House of Commons when the present section was being discussed:

"Any Home Secretary, in exercising a power for a public inquiry, would only think of doing so when some issue in which the public is generally interested arises, something which is a matter of principle and which may constitute a leading case for other fire authorities deciding, or being called upon to decide, a similar set of circumstances" (H. of C. Official Report, S.C.B., April 22, 1947, col. 34).

*Definitions.*—For definitions of "fire authority" and "equipment," see s. 38 (1), *post*. As to "reinforcement scheme," see sub-s. (1) of the present section, *ante*.

**3. Supplementary powers of fire authorities.**—(1) The powers of a fire authority include power—

- (a) to provide accommodation for the fire brigade for their area and its equipment, including housing and other accommodation for members of the brigade and furniture reasonably required for such accommodation;
- (b) to pay to persons, not being members of a fire brigade maintained in pursuance of this Act, who render services for fire-fighting purposes such rewards as the authority think fit;
- (c) to provide and maintain fire alarms in such positions in any street or public place as they think proper, and to affix any such fire alarm to any wall or fence adjoining a street or public place;
- (d) to employ the fire brigade maintained by them, or use any equipment so maintained, outside their area;
- (e) to employ the fire brigade maintained by them, or use any equipment so maintained by them, or use any equipment so maintained, for purposes other than fire-fighting purposes for which it appears to the authority to be suitable and, if they think fit, to make such charge as they may determine for any services rendered in the course of such employment or use. [720]

(2) Before exercising the powers conferred by paragraph (c) of the last foregoing subsection in relation to any trunk road a fire authority shall obtain the consent of the Minister of Transport, and before exercising those powers in relation to any road maintained by a highway authority, other than the Minister of Transport or the fire authority, they shall obtain the consent of the highway authority maintaining the road; and—

- (a) without prejudice to the foregoing provisions of this subsection, the said powers shall not be exercised in a county district except after consultation with the council of the county district,
- (b) the said powers shall not be exercised except after consultation with the chief officer of police for the area in which the fire alarms are to be placed,
- (c) nothing in the said paragraph (c) shall affect any privilege conferred on the Postmaster General by the Telegraph Act, 1869. [721]



(3) Before making any standing arrangements for the exercise of the powers conferred by paragraph (e) of subsection (1) of this section, a fire authority shall obtain the approval of the Secretary of State to the proposed arrangements unless they have been approved by the Minister in charge of any other Government department. [722]

(4) Save as expressly provided in this Act, a fire authority shall not make any charge for services rendered by the authority. [723]

(5) A fire authority may be authorised by the Minister of Health to purchase compulsorily any land, whether situate within or without the area of the authority, which is required by them for the purposes of their functions under this Act, and the Acquisition of Land (Authorisation Procedure) Act, 1946, shall apply as if this Act had been in force immediately before the commencement of that Act :

Provided that section two of that Act (which confers temporary powers for speedy acquisition of land in urgent cases) shall not apply to any compulsory purchase of land under this Act. [724]

*Changes effected.*—This section corresponds to s. 1 (6) and (8) of the Fire Brigades Act, 1938 (31 Halsbury's Statutes 587), but modifies the position in several respects. In particular, the provision of the earlier Act allowing payment to members of a fire brigade in addition to their remuneration is expressly negatived, while the power to make payments to outside brigades in respect of fire services provided for the area is carried over, in altered form, to the present s. 12, *post*. A new provision appears allowing fire brigades and their equipment to be used for other suitable purposes with power to charge for services so rendered subject to Government sanction for any standing arrangement for such use. The provisions for compulsory acquisition are brought up to date.

*Employing fire brigades in trade disputes.*—The Home Secretary assured the Standing Committee of the House of Commons dealing with the Bill that in the regulations to be issued for the government of the fire service specific instructions would be given to fire authorities not to allow fire personnel "to be employed as a means of compulsion" during the course of a trade dispute. Otherwise men in the fire service are ordinary local government employees under neither greater nor less obligation with regard to assisting the civil power than ordinary citizens (H. of C. Official Report, S.C.B., April 24, 1947, cols. 56, 58).

*Purposes other than fire-fighting.*—Note that under sub-s. (1) (e) of this section, first, no consent is necessary, and secondly, there is power to charge. It is only when standing arrangements are made that the approval of the Secretary of State under sub-s. (3) or other Government department is necessary. The effect of this is that all "emergency" acts, such as bringing a child down from a tree or liberating a trapped person from under a tramcar, can be performed without prior approval. The kind of standing arrangement envisaged is for the manning of ambulances by members of fire brigades. In a statement made in the House of Commons on the Re-commitment of the Bill, the Home Secretary pointed out that the primary responsibility for ambulance services rests on the Minister of Health. He hoped that it would be possible in the great majority of cases to arrange that the fire services personnel would be able to drive and to man the ambulances (see now Ministry of Health Circular 109/47, title NATIONAL HEALTH AND UNEMPLOYMENT INSURANCE, *post*). The Home Secretary added that if the Minister of Health gave his sanction for any scheme of amalgamating the fire brigade and ambulance service it would not be necessary for a separate approach to be made to the Home Office (438 H. of C. Official Report 1373-1376).

Apart from these cases involving another Government department the reason for the requirement to submit standing arrangements to the Secretary of State for approval is to prevent fire brigades being used regularly for purposes which might interfere with their work as fire brigades (see H. of C. Official Report, S.C.B., April 24, 1947, cols. 41-44). The power to charge can be used to prevent persons obtaining extra-fire services "on the cheap."

*Trunk road.*—The Trunk Roads Act, 1936 (29 Halsbury's Statutes 183), constituted 4,459 miles of roads trunk roads for which the Minister of Transport was to be highway authority. By the Trunk Roads Act, 1946 (39 Halsbury's Statutes 149), a further 3,685 miles of roads were declared trunk roads and the Minister of Transport was empowered to constitute additional trunk roads or exclude those no longer required as might be expedient for re-organising the national system of routes for through traffic.

An important change brought about by s. 1 (3) of the Act of 1946 was to repeal the provision of the Act of 1936 by which no road in a county borough was to be a trunk road. A county borough fire authority under the present Act will, therefore, have to obtain the consent of the Minister of Transport before providing fire alarms in a trunk road passing through its area.

*Telegraph Act, 1869.*—S. 4 of this Act (19 Halsbury's Statutes 252), confers on the Postmaster General, subject to an exception in the case of messages despatched for private use without payment, the exclusive privilege of transmitting telegrams within the United Kingdom, including any message or other communication transmitted by any apparatus for transmission by electric signals. The rights of the Postmaster General extend over all messages and communications (a) sent by means of electric signals, and (b) in which wire is an essential part, even though electricity is not used. A telephone was held to be a "telegraph" (*A.-G. v. Edison Telephone Co.* (1880), 6 Q. B. D. 244). In *Postmaster General v. National Telephone Co., Ltd.*, [1909] A. C. 321, the House of Lords rejected a suggestion that fire alarm signals

operated from street boxes and maintained by a local authority were outside the privileges of the Postmaster General. Bevir on the Fire Brigades Act, 1938, states at p. 8 :—

“Call-bell circuits which provide communication between firemen's residences and the fire station only are outside the scope of the Postmaster General's monopoly. The local authority which desires to make its own arrangements for the installation of a public fire alarm system is not refused permission by the Postmaster General subject to the recognition of his monopoly. There are a number of such systems erected and maintained by private contractors, but the majority of public fire alarm systems throughout the country have been erected and are maintained by the Post Office.”

*Acquisition of Land (Authorisation Procedure) Act, 1946.*—This Act (39 Halsbury's Statutes 52) provides a uniform procedure for authorising the compulsory acquisition of land by local authorities, though the speedy procedure of s. 2 of that Act is not to apply by virtue of sub-s. (5) of the present section. For the detailed provisions, see s. 1 and Sched. I to the Act of 1946. Inasmuch as the term “fire authority” includes a fire authority constituted under a combination scheme under s. 5 or 6, *post*, the right of compulsory acquisition may be made applicable to such an authority under the present subsection. Note the effect on any compulsory acquisition under the present subsection of Part VIII of the Requisitioned Land and War Works Act, 1945 (38 Halsbury's Statutes 614 *et seq.*), as applied and extended by paragraph 18 of Sched. V, *post* (and see note thereto).

A somewhat similar right of compulsory acquisition obtains under ss. 5 (3) and 15 of the Police Act, 1946 (39 Halsbury's Statutes 621, 631), as amended by s. 6 of and Sched. IV to the Acquisition of Land (Authorisation Procedure) Act, 1946.

*Definitions.*—For definitions of “fire authority,” “equipment,” “fire-fighting purposes” and “street,” see s. 38 (1), *post*.

### *Fire Authorities*

**4. County and county borough councils to be fire authorities.**—As from the appointed day the Fire Brigades Act, 1938, and any other enactment passed before the passing of this Act in so far as it confers on the council of a county district functions for fire-fighting purposes, shall cease to have effect, and the council of every county and county borough shall, subject to the provisions of this Act, be the fire authority for the area of the council :

Provided that nothing in this section shall affect any functions relating to fire prevention, restricting the spread of fires, or means of escape in case of fire, being functions conferred on a council otherwise than as an authority maintaining a fire brigade. [725]

*Appointed day.*—S. 38 (1), *post*, provides that “appointed day” means such day as the Secretary of State may by order appoint. On February 23, 1948, the Secretary of State, under s. 38 (1), *post*, appointed April 1, 1948, as the appointed day for England and Wales for the purposes of the present Act (see S.I. 1948 No. 325).

*Fire Brigades Act, 1938.*—31 Halsbury's Statutes 585.

*Proviso.*—Functions in relation to fire prevention are exercisable by county district councils by or under other statutes, *e.g.*, in connection with cinemas and with factories, the last named being under ss. 34 and 35 of the Factories Act, 1937 (30 Halsbury's Statutes 229 *et seq.*) ; the proviso to this section operates to preserve those duties.

**5. Voluntary schemes for combination of fire authorities.**—(1) If it appears to any two or more fire authorities that it is expedient that their areas should be combined for fire-fighting purposes, they may submit to the Secretary of State a scheme in that behalf (hereafter in this Act referred to as a “combination scheme”) and the Secretary of State may by order approve any combination scheme submitted to him. [726]

(2) Subject to the provisions of this Act, a combination scheme shall make provision with respect to the following matters, that is to say—

(a) the constitution of an authority as the fire authority for the combined area and the establishment of a fire brigade therefor, the transfer to that brigade of members of fire brigades maintained by the constituent authorities and the appointment as first chief officer of the brigade established by the scheme of such person as may be specified therein ;

(b) the payment of the expenses of the fire authority constituted by the scheme out of a combined fire service fund constituted in accordance with the provisions of the scheme ;

- (c) the payment into the combined fire service fund, out of the local funds of the constituent areas, of contributions assessed in accordance with the provisions of the scheme for meeting liabilities imposed on that fund by or under the scheme ;
- (d) the transfer to the fire authority constituted by the scheme of such property, rights and liabilities of the constituent authorities (being property, rights and liabilities held or incurred in connection with the provision of fire services, as may be determined by or under the scheme, or the use by the fire authority constituted by the scheme of any such property) the appointment of officers of that fire authority (including a clerk to that authority and a treasurer of the combined fire service fund) and the transfer to that authority of such officers of the constituent authorities as may be determined by or under the scheme ;
- (e) the payment, by such authority and subject to such provisions as may be provided by the scheme, of compensation to persons employed by any of the constituent authorities who in consequence of the scheme or anything done thereunder suffer direct pecuniary loss by reason of the determination of their appointments or the diminution of their emoluments ;
- (f) in the case of persons who, having immediately before the coming into operation of the scheme been chief officers of fire brigades maintained by any of the constituent authorities, do not on the coming into operation thereof become chief officer of the fire brigade established by the scheme, for the payment in lieu of compensation under the last foregoing paragraph of emoluments, and of pensions, gratuities or allowances, of such amounts, subject to such conditions, and by such authority as may be provided by the scheme,

and may provide for any other matters incidental to or consequential on the provisions of the scheme. [727]

*Analogy with the police.*—The provisions of this section are analogous to those of s. 3 of the Police Act, 1946 (39 Halsbury's Statutes 619), in relation to voluntary amalgamation schemes under that section, but there is a distinction between former chief officers of fire brigades and displaced chief constables.

*Approval by order.*—S. 35, *post*, does not apply to orders by the Secretary of State under sub-s. (1) of this section, and accordingly it is unnecessary to lay such orders before Parliament.

*Definitions.*—For definitions of " fire authority " and " fire-fighting purposes," see s. 38 (1), *post*.

**6. Power of Secretary of State to make combination schemes.**—(1) Subject to the provisions of this section, if it appears to the Secretary of State that it is expedient in the interests of efficiency that a combination scheme should be made for the areas of any two or more fire authorities, and no scheme satisfactory to him has been submitted to him by the fire authorities for those areas under the last foregoing section, the Secretary of State may for that purpose by order make such scheme as he considers expedient, and the provisions of subsection (2) of the last foregoing section shall apply in relation to any such scheme as they apply in relation to a scheme made under that section :

Provided that where the population of a county or county borough, as estimated by the Registrar General, is one hundred thousand or upwards, then except with the consent of the council of the county or borough no scheme shall be made by the Secretary of State under this section for the combination of the county or borough with any area or areas of a fire authority or authorities of which the population or aggregate population, as so estimated, exceeds that of the county or borough. [728]

(2) Where the Secretary of State proposes to make a scheme under this section, he shall give to the fire authorities concerned notice of the general

nature of the proposed scheme ; and unless those authorities give him notice that they assent thereto, he shall cause a public local inquiry to be held by a person appointed by him, not being an officer of a fire authority or of any Government department. [729]

(3) The Secretary of State shall lay before each House of Parliament a draft of any scheme proposed to be made by him under this section, and, where a local inquiry has been held under this section with respect thereto, shall lay together with the draft a copy of the report of the person by whom the inquiry was held ; and if either House within the period of forty days beginning with the day on which the draft scheme is laid before it resolves that the scheme be not made, no further proceedings shall be taken thereon, but without prejudice to the laying before Parliament of a new draft scheme.

In reckoning any such period of forty days as aforesaid, no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days. [730]

*Effect of section.*—This section closely follows the pattern of s. 4 of the Police Act, 1946 (39 Halsbury's Statutes 620). The proviso to sub-s. (1) is intended to prevent a compulsory combination scheme being made the effect of which would be to force a county or county borough whose population is at least 100,000 into combination with one or more fire authorities whose aggregate population exceeds that of the county or county borough. In Standing Committee of the House of Commons the Home Secretary stated that in the main he proposed to wait until the Local Government Boundary Commission had reported before he resorted to compulsion, though that did not mean he did not welcome voluntary arrangements in the meantime (H. of C. Official Report, S.C.B., May 1, 1947, col. 142).

*Order of the Secretary of State.*—S. 35, *post*, does not apply to orders by the Secretary of State under sub-s. (1) of this section and accordingly it is unnecessary to lay such orders before Parliament.

*Public local inquiry.*—S. 290 (2), (3) and (5) of the Local Government Act, 1933 (26 Halsbury's Statutes 459), applies to any inquiry held under this section (s. 33 (2), *post*, and see note thereto).

*Laying a draft scheme before Parliament.*—As from the commencement of that Act, s. 6 (2) of the Statutory Instruments Act, 1946 (39 Halsbury's Statutes 787), applied to schemes proposed to be made under this section, and the substituted provisions of sub-s. (1) thereof accordingly became applicable. The Statutory Instruments Act, 1946, was brought into full operation on January 1, 1948, by S.I. 1948 No. 3.

*Definitions.*—As to the construction of "combination scheme," see s. 5 (1), *ante*. For definition of "fire authority," see s. 4, *ante*, and s. 38 (1), *pos*.

**7. Appointment of joint committees by fire authorities.**—(1) A joint committee under section ninety-one of the Local Government Act, 1933, shall not be appointed for the purposes of this Act without the prior approval of the Secretary of State. [731]

(2) For the avoidance of doubt it is hereby declared that a combination scheme may be submitted and approved under section five of this Act or may be made under section six thereof notwithstanding that a joint committee under the said section ninety-one has been appointed for fire service purposes for all or some of the areas in respect of which the combination scheme is submitted or made. [732]

*Local Government Act, 1933, s. 91.*—26 Halsbury's Statutes 355. This section gives local authorities a general residuary power to concur with any one or more other local authorities in appointing from amongst their respective members a joint committee of those authorities for any purpose in which they are jointly interested, with power to delegate to the committee so appointed. This power still holds, in relation to fire service purposes, notwithstanding the power to make voluntary combination schemes under s. 5, *ante*, but the prior approval of the Secretary of State is now required. As to the distinction between joint committees and fire authorities constituted by combination schemes, see note to s. 8, *post*.

*Approval of joint committee.*—On the question of approval, the Home Secretary intimated in Standing Committee of the House of Commons that, where a joint committee was desired, he saw no reason why the Secretary of State, after examining the circumstances and, in particular, the circumstances in which it could be dissolved, should withhold his approval, but he must be assured that the fire arrangements were sufficiently permanent to enable him to feel that it was a preferable way of dealing with the matter to that of combination. Great importance was attached to provision in the scheme for long-term notice of breaking-up the joint committee to be established. For details, see H. of C. Official Report, S.C.B., May 1, 1947, col. 144.

**8. Constitution and powers of fire authorities constituted by combination schemes.**—(1) A fire authority constituted by a combination scheme shall

consist of such representatives of each of the constituent areas as may be prescribed by the scheme, and every such authority shall be a body corporate by such name as may be prescribed by the scheme with a common seal and with power to hold land without licence in mortmain. [733]

(2) Provision may be made by a combination scheme for applying in relation to the constitution and proceedings of the fire authority thereby constituted, and in relation to the officers of that authority, any of the provisions of Parts II to IV of the Local Government Act, 1933 (which contain general provisions as to members, committees and officers of local authorities), subject to such modifications as may be prescribed by the scheme. [734]

(3) The Acquisition of Land (Authorisation Procedure) Act, 1946, and the provisions of the Local Government Act, 1933, with respect to the acquisition of land by agreement and the appropriation and disposal of land shall apply to fire authorities constituted by combination schemes as they apply to fire authorities being councils of counties or county boroughs, and accordingly references in the said Act of 1946 and the said provisions of the said Act of 1933 to local authorities shall include references to fire authorities constituted by combination schemes. [735]

(4) For the purposes of the discharge of their functions under a combination scheme, the fire authority constituted by the scheme shall have the powers of the council of a county or county borough in relation to the borrowing of money for fire service purposes, and the provisions of Part IX of the Local Government Act, 1933, and of any other enactment relating to the borrowing of money by local authorities shall apply accordingly, subject to such adaptations and modifications as may be prescribed by the scheme. [736]

(5) The accounts of every fire authority constituted by a combination scheme shall be subject to audit by a district auditor under Part X of the Local Government Act, 1933. [737]

(6) A fire authority constituted by a combination scheme may, if so authorised by the scheme, make arrangements with any constituent authority for the use by the fire authority of the services of officers and servants of the constituent authority and for the making of contracts and payments on behalf of the fire authority by the constituent authority. [738]

(7) The Local Government Superannuation Act, 1937, shall have effect as if a fire authority constituted by a combination scheme were included among the local authorities specified in Part I of the First Schedule to that Act, and in relation to contributory employees of such a fire authority the appropriate superannuation fund for the purposes of that Act shall be such fund as may be determined by or under the scheme. [739]

(8) For the purposes of section nine of the Superannuation Act, 1935 (which makes provision for civil servants entering the service of a local authority and officers of a local authority becoming civil servants) a fire authority constituted by a combination scheme shall be deemed to be a local authority. [740]

*Analogy with the police.*—This section runs in parallel with s. 5 of the Police Act, 1946 (39 Halsbury's Statutes 621), except that sub-s. (8) of the present section does not there appear. The object of allowing the inclusion of Parts II to IV of the Local Government Act, 1933 (see *infra*), in the said s. 5 (and, by implication, in the present section) was to allow the imposition of penalties.

*Body corporate.*—By constituting a fire authority under a combination scheme a body corporate the authority is placed on a like footing to that of a county council who are a body corporate by statute (Local Government Act, 1933, s. 2 (2) ; 26 Halsbury's Statutes 307). The position of councils of county boroughs who also are to be fire authorities under s. 4 of this Act is different ; the council of a county borough is not incorporated but the inhabitants of the borough are incorporated to constitute a municipal corporation which is capable of acting by the council (see Municipal Corporations Act, 1882, ss. 6, 7 ; 10 Halsbury's Statutes 577 ; Local Government Act, 1933, s. 17 ; 26 Halsbury's Statutes 313). Joint committees, referred to in s. 7 of this Act, have not corporate capacity.

*Licence in mortmain.*—The Mortmain and Charitable Uses Acts, 1888 and 1891, as amended by the Mortmain and Charitable Uses Act Amendment Act, 1892 (2 Halsbury's Statutes 385,

396, 398), prohibit the assurance of land to bodies corporate except under royal licence or with statutory authority.

*Local Government Act, 1933, Parts II to IV.*—26 Halsbury's Statutes 333 to 372. These are the general provisions governing the working of local authorities.

*Acquisition and disposal of land.*—The Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Halsbury's Statutes 52), provides a uniform procedure for authorising the compulsory acquisition of land by local authorities and its provisions are here extended to fire authorities constituted by combination schemes, though they would appear to be applicable without further mention by the combined effect of s. 3 (5), *ante*, and the definition of "fire authority" in s. 38 (1), *post*. In any case the speedy procedure of s. 2 of the Act of 1946 does not apply, as the proviso to s. 3 (5), *ante*, negatives its application "to any compulsory purchase of land under this Act" and not merely under that section.

The provisions of the Local Government Act, 1933, as to the acquisition of land by agreement and the appropriation and disposal of land are contained in Part VII of that Act (26 Halsbury's Statutes 391 *et seq.*); see, in particular, ss. 157, 158 and 163-166. The detailed provisions of Part VII as to compulsory acquisition are now superseded by the Act of 1946 (see s. 6 thereof and Sched. IV thereto; 39 Halsbury's Statutes 60, 69).

*Borrowing of money.*—The Local Government Act, 1933, Part IX (26 Halsbury's Statutes 412 *et seq.*), sets out the general provisions as to borrowing applicable to local authorities, including county and county borough councils.

*Audit by a district auditor.*—The Local Government Act, 1933, Part X (26 Halsbury's Statutes 424 *et seq.*), makes detailed provision by s. 219 thereof for the audit by district auditors of accounts of, *inter alia*, county councils, certain committees thereof and "any other accounts which are made subject to audit by a district auditor by virtue of any enactment or statutory order. . . ."

*Local Government Superannuation Act, 1937, Sched. I, Part I.*—30 Halsbury's Statutes 419. The effect of the inclusion in this Part of fire authorities constituted by combination schemes is to make certain employees of such authorities compulsorily superannuable. The term "contributory employees" appearing in sub-s. (7) of the present section is defined in s. 3 (1) of the Act of 1937.

*Superannuation Act, 1935, s. 9.*—28 Halsbury's Statutes 302.

**9. Amendment and revocation of combination schemes.**—(1) A combination scheme approved or made under section five or section six of this Act may be amended or revoked by a subsequent scheme approved or made under those sections, and the foregoing provisions of this Act shall, so far as applicable, have effect in relation to any such amending or revoking scheme subject to any necessary modifications and to the following provisions of this section. [741]

(2) Without prejudice to the generality of the provisions of subsection (1) of this section, provision may be made by any such subsequent scheme—

- (a) for the division of the combined area into any two or more areas for the purposes of this Act, being either counties or county boroughs or combined areas constituted by the subsequent scheme, or for the inclusion in the combined area of the area of any other fire authority;
- (b) for the dissolution of any fire authority constituted by the original scheme, and the winding-up of any combined fire service fund established thereunder, or for the reconstitution of any such authority or fund;
- (c) for the transfer or re-transfer to such fire brigades as may be determined by the subsequent scheme of members of the fire brigade established by the original scheme;
- (d) for the transfer or re-transfer to such authorities as may be determined by the subsequent scheme of any officers, property, rights or liabilities of the fire authority constituted by the original scheme;
- (e) for any other matters incidental to or consequential on the provisions of the subsequent scheme. [742]

(3) The authority or authorities by whom a scheme for the amendment or the revocation of a combination scheme or schemes may be submitted to the Secretary of State under subsection (1) of section five of this Act shall be the fire authority or authorities constituted by the scheme or schemes to be amended or revoked, together, in the case of an amending scheme which provides for the inclusion in a combined area of the area of a fire authority other than one constituted by a combination scheme, with that fire authority; and references to fire authorities in subsection (1) of section five of this Act shall be construed accordingly. [743]



(4) The authorities to whom, under subsection (2) of section six of this Act, notice must be given by the Secretary of State of a scheme proposed to be made by him for the amendment or revocation of a combination scheme or schemes shall be the authority or authorities by whom a scheme for that purpose might have been submitted by virtue of the last foregoing subsection, and the council of any county and the council of any county borough comprised in the combined area constituted by the original scheme or schemes. [744]

*Analogy with the police.*—This section closely follows the provisions of s. 6 (1) to (4) of the Police Act, 1946 (39 Halsbury's Statutes 622, 623).

*Approved or made under those sections.*—Except as otherwise provided, any amending or revoking scheme is to be made under the same conditions as an original combination scheme. It follows that a voluntary amending or revoking scheme must be submitted to the Secretary of State for approval under s. 5 (1), *ante*, while sub-s. (3) of the present section seeks to meet the particular circumstances in which such a scheme would be submitted, and sub-s. (4) of the present section adapts the machinery of s. 6, *ante*, where the Secretary of State is desirous of making a compulsory amending or revoking scheme.

As to sub-s. (3), note that the original constituent authorities are not included in those who may submit an amending or revoking scheme. An amendment which would have permitted this was moved in Standing Committee of the House of Commons (see H. of C. Official Report, S.C.B., May 1, 1947, cols. 147-149), but was withdrawn when the Home Secretary pointed out that, as a matter of general principle, any local authority may approach the Secretary of State at any time. A further reason given by the Government for their reluctance to accept the amendment was the necessity of securing reasonable permanence in combination schemes, especially those created compulsorily.

*Combined fire service fund.*—See s. 5 (2) (b), *ante*.

**10. Power to make schemes in advance of alterations of local government areas.**—If an order is made under the Local Government (Boundary Commission) Act, 1945, constituting any area as a new county or county borough as from a date specified in the order, a combination scheme may be made under this Act with respect to that area before that date but so as to come into operation on or after that date; and in relation to such a scheme the provisions of this Act shall apply subject to any necessary modifications and as if for references to the fire authority there were substituted references to the fire authority for any county, county borough or combined area of which the whole or any part is to be comprised in the new county or county borough. [745]

*Local Government (Boundary Commission) Act, 1945.*—38 Halsbury's Statutes 314. This Act established a Local Government Boundary Commission charged with the duty of reviewing and, where expedient, altering local government areas in England and Wales. Provisional proposals of the Commission for some areas have already been announced.

*On or after that date.*—This section follows the general lines of s. 7 of the Police Act, 1946 (39 Halsbury's Statutes 623); minor variations include "on or after that date" in the present section as against "at that date" in the said s. 7.

*Operation of the section.*—The Home Secretary said in Standing Committee of the House of Commons on May 1, 1947 :—

"I will give an assurance that no action detrimental to a newly created authority will be taken without consulting those authorities who will be succeeded by the new authority when it is created, and every effort will be made, if it is necessary to exercise the powers under this clause, to make sure that what is done is done in accordance with the wishes of the inhabitants of the district concerned. I do not anticipate that the power will be used in many cases, if at all, but I know that the Boundary Commission feel that it is a power which should be available" (H. of C. Official Report, S.C.B., May 1, 1947, cols. 150-151).

**11. Adaptation of local Acts relating to fire services.**—(1) Where, by any local Act in force with respect to an area of any local authority which ceases to be a separate authority for fire-fighting purposes by virtue of this Act or of a scheme thereunder, provision is made for conferring or imposing special powers or duties on persons employed for such purposes by that authority, the Secretary of State may by order adapt the local Act so far as appears to him to be necessary or expedient for the purpose of the exercise or performance of those powers or duties by persons so employed by the fire authority for the county comprising that area, or for the combined area, as the case may be :

Provided that nothing in this subsection or in any order made in accordance therewith shall be construed as extending the area within which or the



matters in relation to which any such powers or duties as aforesaid are authorised or required by the local Act to be exercised or performed. [746]

(2) As, from the appointed day any reference in any enactment passed before the passing of this Act and for the time being in force to a fire brigade (by whatever name described) maintained by an authority which is an authority for fire-fighting purposes by virtue of this Act shall be construed as a reference to the brigade maintained by the authority in pursuance of this Act. [747]

(3) Any order under subsection (1) of this section may be varied or revoked by a subsequent order thereunder made in the like manner and subject to the like provisions. [748]

*Adapting local Acts.*—The general power of adaptation here conferred on the Secretary of State is necessitated by the wide variation in the provisions of the local Acts applying in particular districts. The Local Government Act, 1933, s. 148 (1) (e) (26 Halsbury's Statutes 386), makes a somewhat similar provision, while sub-ss. (1) and (3) of the present section, read in conjunction with s. 35, *post*, follow generally the model of s. 8 of the Police Act, 1946 (39 Halsbury's Statutes 623, 624). Note that under the proviso to sub-s. (1), *ante*, any extension of the areas or subject-matter to which the local provisions apply would be *ultra vires* the Secretary of State.

*Order of the Secretary of State.*—Any orders under sub-s. (1), *ante*, require to be laid before Parliament under s. 35, *post* (and see note thereto).

*Definitions.*—As to "fire-fighting purposes," "fire authority" and "appointed day," see s. 38 (1), *post*.

**12. Discharge of functions of fire authorities through other fire authorities or persons.**—(1) A fire authority may make arrangements with any other fire authority or other persons who maintain a fire brigade so as to secure, by the provision of services by the other fire authority or persons, the discharge of all or any of the first-mentioned fire authority's functions under this Act in respect of all or any part of its area, and arrangements under this subsection may make provision with respect to the terms as to payments or otherwise on which the services in question are to be provided :

Provided that no arrangements shall take effect under this subsection unless submitted to and approved by the Secretary of State. [749]

(2) Where any fire authority have requested another fire authority to enter into arrangements under the last foregoing subsection, and the other fire authority are unwilling to do so, or the authorities cannot agree as to the extent of the services to be provided under such arrangements or the terms on which they are to be provided, the first-mentioned authority may request the Secretary of State to determine what arrangements, if any, should be made for the provision of services by the other fire authority. [750]

(3) Where in the case of any fire authority no arrangements approved by the Secretary of State under subsection (1) of this section are in force and it appears to the Secretary of State expedient with a view to securing greater efficiency or economy that it is for consideration whether such arrangements should be entered into with any other authority, he may give notice to the authorities accordingly. [751]

(4) Where a request is made to the Secretary of State under subsection (2) of this section, or notice is given by the Secretary of State under the last foregoing subsection, he shall afford an opportunity to the fire authorities concerned to make representations and, if he thinks fit or if any of those authorities request him so to do, shall cause a public local inquiry to be held. [752]

(5) If the Secretary of State is satisfied, after considering any representations made under the last foregoing subsection and, if an inquiry is held, the report of the person by whom the inquiry was held, that it is expedient with a view to securing greater efficiency or economy that arrangements should be made for the provision of services as mentioned in subsection (1) of this section, he may direct that the fire authorities shall enter into such arrangements as may be specified in the direction. [753]

*Changes effected.*—Sub-s. (1) of this section reproduces in developed form s. 1 (3) of the Fire Brigades Act, 1938 (31 Halsbury's Statutes 586), but now makes necessary the approval of the Secretary of State. The rest of the section corresponds to s. 10 (1) and (2) of the earlier Act, the function of the Fire Service Commission being taken over by the Secretary of State directly and that Minister being given power to take the initiative where no approved arrangements under the section are in force.

*Discharge of functions.*—See note to s. 1, *ante*. The provisions of sub-s. (1) of the present section should be distinguished from those of s. 2 (8), *ante*. The former are general, they allow arrangements both with other fire authorities and with private brigades, and the approval of the Secretary of State is required; the latter are limited to supplementing and reinforcing, they do not allow arrangements with other fire authorities (this being dealt with earlier in the same section), and no ministerial approval is required. Both, however, are permissive (see also the Preliminary Note, *ante*).

*Approval of arrangements under sub-s. (1).*—The Secretary of State has power to decline to sanction any arrangements with "other persons," i.e., with those responsible for private fire brigades, and has indicated that he will exercise this power where he is of opinion that conditions of service of the men in private employment are such that they ought not to be used to relieve the fire authority's service or that the men should have a certain statutory guarantee in regard to pensions (see H. of C. Official Report, S.C.B., May 1, 1947, cols. 152-156).

*Powers in default.*—Sub-s. (1) applies to arrangements (a) with other fire authorities, and (b) with those responsible for private fire brigades; but the rest of the section applies solely to case (a). It follows that the powers of the Secretary of State under sub-s. (2) to determine what arrangements should be made and under sub-s. (5) to direct arrangements to be entered into apply only to arrangements between two fire authorities, and the Secretary of State has no power under this section to direct arrangements with the organisers of private brigades.

*Public local inquiry.*—S. 290 (2), (3) and (5) of the Local Government Act, 1933 (26 Halsbury's Statutes 459), applies to any inquiry held under this section (s. 33 (2), *post*, and see note thereto).

### *Supply of water for fire-fighting*

#### **13. Duty of fire authorities to ensure supply of water for fire-fighting.**—

A fire authority shall take all reasonable measures for ensuring the provision of an adequate supply of water, and for securing that it will be available for use, in case of fire. [754]

*Extent of liability.*—The obligation upon fire authorities under this section is considerably less onerous than are those imposed by s. 1, *ante*, in view of the physical difficulty of securing an adequate water supply in some localities. Nevertheless, the duty under this section is wider than under the Fire Brigades Act, 1938 (see ss. 2 and 3 thereof; 31 Halsbury's Statutes 588, 589).

**14. Supply of water by statutory undertakers.**—(1) For the purposes of the last foregoing section, a fire authority may enter into an agreement with statutory water undertakers for the taking by the undertakers, on such terms as to payment or otherwise as may be specified in the agreement, of such measures as may be so specified for securing that an adequate supply of water will be available in case of fire; and no water undertakers shall unreasonably refuse to enter into any agreement proposed by a fire authority under this subsection.

Any question whether statutory water undertakers have unreasonably refused to enter into an agreement under this subsection shall be determined by the Minister of Health. [755]

(2) Without prejudice to the generality of the last foregoing subsection, a fire authority, if satisfied that the existing supply of water provided by any statutory water undertakers for domestic and industrial purposes would be likely to be inadequate in case of fire, may enter into an agreement with the undertakers under the last foregoing subsection for the provision of such additional supply of water as may be specified in the agreement. [756]

(3) Sections thirty-two to thirty-four of the Third Schedule to the Water Act, 1945 (which require undertakers at the expense of the fire authority to provide hydrants) shall apply to all statutory water undertakers, and shall so apply in substitution for any other provision having effect for the purposes of those sections by virtue of any enactment; and—

(a) undertakers shall at the expense of the fire authority cause the situation of every fire hydrant provided by the undertakers to be plainly indicated by a notice or distinguishing mark, which may be placed on any wall or fence adjoining a street or public place;

- (b) where any such hydrant is damaged as the result of any use made of it, with the authority of the undertakers, not being a use for fire-fighting purposes or for any other purposes of a fire brigade maintained in pursuance of this Act, the fire authority shall not be liable for the cost of repairing or replacing the hydrant incurred as the result of the damage. [757]

(4) Section thirty-eight of the Third Schedule to the Water Act, 1945 (which provides for penalties for breaches of obligations under Part VIII of that Schedule) shall apply to any breach of an obligation of undertakers under subsection (1) or (3) of this section or under an agreement entered into in pursuance of the said subsection (1). [758]

(5) Any person who uses a fire hydrant, otherwise than for fire-fighting purposes or for any other purposes of a fire brigade maintained in pursuance of this Act or for any purpose authorised by the undertakers or other persons to whom the hydrant belongs, or who damages or obstructs any fire hydrant, otherwise than in consequence of its use for any such purpose as aforesaid, shall be liable on summary conviction to a fine not exceeding ten pounds. [759]

(6) The Secretary of State may, after consultation with the Central Fire Brigades Advisory Council constituted under this Act, make regulations providing for uniformity in fire hydrants provided by statutory water undertakers and in the notices or marks indicating their situation; and in any case to which regulations under this subsection apply such undertakers shall not be deemed to have complied with their obligations under subsection (3) of this section and the enactments therein referred to unless the hydrants, notices or marks provided by them conform with the regulations. [760]

(7) In this and the next following section the expression "statutory water undertakers" has the same meaning as in the provisions of the Water Act, 1945, other than Part II thereof; and references in this section to any provision of the Third Schedule to that Act shall include references to any other provision of that Schedule (whether as to the giving of notices, the enforcement of obligations, or otherwise) ancillary thereto. [761]

*Changes effected.*—S. 2 (6) of the Fire Brigades Act, 1938 (31 Halsbury's Statutes 589), empowered fire authorities to enter into agreements with any water company or person for securing an adequate supply of water in case of fire. The present section and that following elaborate this power, dividing it into the two categories of supply (a) by statutory undertakers, and (b) by other persons.

*Unreasonable refusal.*—Where statutory undertakers are alleged to have unreasonably refused to enter into an agreement with a fire authority under sub-s. (1) the question will be submitted to and determined by the Minister of Health, and if the Minister holds that unreasonable refusal has been established, the water undertakers will have committed a breach of statutory duty, to which, by sub-s. (4) of the present section, the penalties of s. 38 of Sched. III to the Water Act, 1945 (38 Halsbury's Statutes 555), apply. See, generally, notes to s. 1, *ante*.

*Water Act, 1945.*—For Part VIII and ss. 32 to 34 and 38 of Sched. III thereto, see 38 Halsbury's Statutes 554 and 555. Sched. III to the Water Act contains a new Waterworks Code in substitution for that contained in the Waterworks Clauses Acts, 1847 and 1863 (20 Halsbury's Statutes 186, 220). S. 32 of the Water Act itself (38 Halsbury's Statutes 519) authorises the application of this Code by order of the Minister of Health, but the effect of the application of part of the Code by the present section is to dispense with the safeguards of s. 32, e.g., as to modifying and adapting local Acts before June 14, 1950. "Any enactment" includes a local Act.

*Penalties for breach of obligations.*—As to the effect of imposing specific penalties, see *Atkinson v. Newcastle and Gateshead Waterworks Co.* (1877), 2 Ex. D. 441, and note to s. 1 *ante*.

Note that the maximum penalties provided by s. 38 of Sched. III to the Water Act (38 Halsbury's Statutes 555), are a fine not exceeding £50 and a further fine not exceeding £5 for each day during which the failure of statutory undertakers to comply with their obligations continues after notice thereof, but prevention by frost, drought, unavoidable accident or other unavoidable cause or the execution of necessary works is a good defence. Note that failure to comply with regulations providing for uniformity in fire hydrants attracts these penalties through the operation of sub-s. (6) of the present section.

*Central Fire Brigades Advisory Council.*—See s. 29, *post*.

*Regulations of the Secretary of State.*—Up to the time of going to press no regulations had been made under sub-s. (6). Any such regulations require to be laid before Parliament (s. 35 (1), *post*, and see note thereto).

*"Statutory water undertakers."*—S. 59 (1) of the Water Act, 1945 (38 Halsbury's Statutes

534), defines this term as meaning "any company, local authority, board, committee or other person supplying water under an enactment . . . but the said expression does not include a railway company or navigation authority having statutory power to sell surplus water or any body or person supplying water solely for the purpose of producing motive power by hydraulic pressure."

### 15. Provision of water supply otherwise than by statutory undertakers.—

(1) A fire authority shall for the purposes of the last but one foregoing section have power by agreement—

- (a) to secure the use, in case of fire, of water under the control of any person other than statutory water undertakers ;
- (b) to improve the access to any such water ;
- (c) to lay and maintain pipes and to carry out other works in connection with the use of such water in case of fire. [762]

(2) Subject to any agreement under the last foregoing subsection, a fire authority may use for fire-fighting purposes any convenient and suitable supply of water, but shall be liable to pay reasonable compensation therefor :

Provided that nothing in this subsection shall affect the duty of undertakers to whom section forty-two of the Waterworks Clauses Act, 1847, or section thirty-six of the Third Schedule to the Water Act, 1945, applies to supply water for the said purposes without compensation or payment.

[763]

*Water under the control of any person other than statutory water undertakers.*—*E.g.*, open water of various kinds, such as in canals, ponds and streams.

*Waterworks Clauses Act, 1847, etc.*—For s. 42 of this Act, see 20 Halsbury's Statutes 201. For the Water Act, 1945, Sched. III, s. 36, see 38 Halsbury's Statutes 555.

*Definitions.*—As to "statutory water undertakers," see s. 14 (7), *ante*, and note thereto. As to "fire authority" and "fire-fighting purposes," see s. 38 (1), *post*.

**16. Notice to be given of proposed works affecting water supply and fire hydrants.**—(1) Where a person proposes to carry out any works for the purpose of supplying water to any part of the area of a fire authority, he shall give notice in writing thereof to the fire authority, and the notice shall be given—

- (a) not less than fourteen days before the works are begun, in any case where the works are proposed to be carried out to comply with a requirement imposed under any enactment other than the Water Act, 1945 ;
- (b) not less than six weeks before the works are begun, in any other case.

[764]

(2) At least seven days before any works which affect any fire hydrant are begun, the authority or person by whom the works are to be executed shall give notice in writing to the fire authority :

Provided that where in a case of emergency it is not practicable for notice to be given at the time required by the foregoing provisions of this subsection, those provisions shall be deemed to have been complied with if the notice is given as early as may be. [765]

*Effect of section.*—The effect of sub-s. (1) was explained by the Under-Secretary of State for the Home Department in Standing Committee of the House of Commons on May 13, 1947, as follows :—

"Under the Fire Brigades Act, 1938, the local authority was entitled to 14 days' notice where it was proposed to lay down a water supply in any of the areas of a fire authority, but it was found that 14 days' notice was quite inadequate for the purposes of the fire authority. It was unreasonable to ask for a longer period because, under the Waterworks Clauses Act, 1847, the water authority were expected to provide a domestic water supply on 28 days' notice."

"If the water authority had only 28 days' notice, it was unreasonable to expect them to give the fire authority more than 14 days' notice. Under the Water Act, 1945, s. 25 (2) and Sched. III—the corresponding provision—the period has been increased from 28 days to 3 months. In those circumstances it is not unreasonable to ask the water undertaking to give the fire authority at least 6 weeks' notice. Sched. III of the 1945 Act does not come into operation in relation to any particular water undertaking until applied thereto by order of the Minister of Health. This Amendment, therefore, will perpetuate the 14 days' notice until such time as the Water Act is applied by order to any particular undertaking, in which

case the longer period of 6 weeks will be required " (H. of C. Official Report, S.C.B., May 13, 1947, cols. 231-232).

The proviso as to emergency notice applies only to fire-hydrants covered by sub-s. (2) of this section.

*Administrative provisions*

**17. Conditions of service.**—(1) The Secretary of State may, subject to the provisions of this section, make regulations as to the conditions of service of persons employed as members of fire brigades maintained in pursuance of this Act, and in particular—

- (a) as to ranks, pay and allowances ;
- (b) as to hours of duty and leave ;
- (c) as to the maintenance of discipline ;
- (d) as to appeals against dismissal or disciplinary action (including dismissal on disciplinary grounds).

References in this section to the conditions of service of persons employed as aforesaid include references to welfare arrangements for such persons. [766]

(2) Where—

- (a) the Secretary of State is satisfied that proper arrangements are in force for the consideration, by persons representing the interests of fire authorities and of persons employed as members of fire brigades maintained in pursuance of this Act, or any class of persons so employed, of questions arising as to the conditions of service of persons so employed or of the class of persons in question, as the case may be ; and
- (b) a recommendation is made in accordance with the arrangements as to any matter falling within the last foregoing subsection,

then if the Secretary of State approves the recommendation he may by regulations under this section give effect thereto. [767]

(3) Where the Secretary of State does not approve any recommendation made as mentioned in the last foregoing subsection he shall refer the recommendation for further consideration in accordance with the arrangements, and for the making in accordance with the arrangements of a report thereon within such period not less than twenty-one days as he may specify, and shall take into consideration any report so made before proceeding to make regulations under this section as to any matter to which the recommendation relates. [768]

(4) Where, without any such recommendation as aforesaid in that behalf having been made, the Secretary of State proposes to make regulations under this section, then, if such arrangements as aforesaid are in force as respects the persons to whom the regulations are to relate, he shall before making the regulations refer his proposals—

- (a) for consideration in accordance with the arrangements ; and
- (b) for the making in accordance with the arrangements of a report on the proposals within such period not less than twenty-one days as the Secretary of State may specify,

and where a report is so made then if the Secretary of State approves the recommendations in the report he may by regulations under this section give effect thereto, but if he does not approve the recommendations the last foregoing subsection shall apply as it applies where he does not approve recommendations made as mentioned in subsection (2) of this section. [769]

(5) In the proviso to subsection (1) of section nineteen of the Wages Councils Act, 1945 (which excludes from the operation of Part III of that Act workers whose remuneration is fixed under other enactments), after the words "the Education Act, 1944," there shall be inserted the words "the Fire Services Act, 1947." [770]

*Effect of section.*—This section empowers the Secretary of State to make regulations governing the conditions of service of fire personnel, including pay, hours of duty, discipline and welfare arrangements but excluding matters specified in s. 18 (1), *post*. It is expected that negotiating machinery covering all fire brigades will be in existence, constituted on Joint Industrial Council lines, through which proposals for regulations will normally be initiated, and which will be consulted on any proposals initiated by the Secretary of State. The whole section is obviously the result of long negotiation between the parties interested and their representatives.

*Regulations.*—Up to the time of going to press, no regulations had been made by the Secretary of State under this section. Any such regulations require to be laid before Parliament (s. 35 (1), *post*, and see note thereto).

*Wages Councils Act, 1945, s. 19 (1).*—38 Halsbury's Statutes 471. The purpose of sub-s. (5) of the present section was explained by the Home Secretary in Standing Committee of the House of Commons on May 13, 1947, as follows:—

"Part III of the Conditions of Employment and National Arbitration Order, 1940, entail that terms and conditions of employment which have been settled by machinery of negotiation or arbitration to which the parties are organisations of employers and trade unions representing a substantial portion of the employees or workers in a trade or industry are binding on both sides. S. 19 of the Wages Councils Act, 1945, provides for Part III of this Order to remain in operation after the Order has ceased to have effect, but there is a proviso which excludes from the considerations I have just mentioned various classes of workers whose wages are determined under certain statutory provisions, such as agricultural wages, which are determined under a separate statute. . . . In this Clause we suggest that wages and conditions of service here shall similarly be determined by the methods within this Statute and it would, therefore, appear appropriate that decisions reached under this Statute should similarly be excluded" (H. of C. Official Report, S.C.B., May 13, 1947, cols. 240-241).

### 18. Procedure and qualifications for appointments and promotions.—

(1) The Secretary of State may, after consultation with the Central Fire Brigades Advisory Council constituted under this Act, make regulations as to any of the following matters, that is to say—

- (a) the method of appointment of chief officers of fire brigades maintained in pursuance of this Act;
- (b) the procedure for the appointment by a fire authority of members, other than the chief officer, of any such brigade;
- (c) the qualifications for appointment to any such brigade or to any rank therein, and for promotion into any such rank; and
- (d) the procedure for such promotion. [771]

(2) Nothing in the last foregoing section shall apply to the matters specified in subsection (1) of this section. [772]

*Object of the section.*—The section is designed to secure by regulations of the Secretary of State a sufficient standardisation of appointments, qualifications and promotion to apply satisfactorily the wages scales expected to be drawn up under the negotiating machinery of s. 17, *ante*.

*Central Fire Brigades Advisory Council.*—See s. 29, *post*.

*Regulations.*—Up to the time of going to press, no regulations had been made under this section. Any such regulations require to be laid before Parliament (s. 35 (1), *post*, and see note thereto).

*Appointment by a fire authority.*—See the Preliminary Note, *ante*.

**19. Fire brigade establishments to be determined in accordance with approved schemes.**—(1) The establishment of members of a fire brigade of different descriptions and ranks, and of fire stations and equipment of different descriptions, to be maintained by a fire authority in pursuance of the foregoing provisions of this Act shall be determined in accordance with the provisions of a scheme made by the authority under this section (hereafter in this Act referred to as an "establishment scheme") and for the time being in force. [773]

(2) An establishment scheme shall provide that the chief officer of the fire brigade to which the scheme relates shall be directly responsible to the fire authority maintaining the brigade or to a committee thereof. [774]

(3) An establishment scheme shall be submitted to the Secretary of State, and shall come into force when approved by him, either as submitted or subject to such modifications as he may direct. [775]

(4) An establishment scheme may be varied by a subsequent scheme made in like manner and subject to the like provisions as the scheme varied. [776]



(5) If as respects the area of any fire authority—

(a) before the first day of January, nineteen hundred and forty-eight, or such later date as the Secretary of State may in special circumstances allow, no establishment scheme has been submitted to the Secretary of State, or

(b) at any time it appears to the Secretary of State that the establishment scheme in force is not satisfactory,

the Secretary of State may, after affording to the fire authority an opportunity of making representations to him, make a scheme. [777]

(6) The provisions of subsections (1), (2), (4) and (5) of this section shall apply to a scheme made under the said subsection (5) as if it were an establishment scheme submitted to and approved by the Secretary of State. [778]

(7) In the case of a fire authority, other than the London County Council, which is the council of a county, the foregoing provisions of this section shall have effect subject to the provisions of the First Schedule to this Act. [779]

(8) The Secretary of State may, for the purposes of his functions under this section, hold such public local inquiries as he thinks fit; and if in connection with the making of a scheme under paragraph (b) of subsection (5) of this section the fire authority so requires the Secretary of State shall cause a public local inquiry to be held before he makes the scheme. [780]

(9) The provisions in that behalf of the Second Schedule to this Act shall have effect for the purposes of this section in the case of fire authorities constituted by combination schemes. [781]

(10) In relation to any period before the appointed day the foregoing provisions of this section and the provisions ancillary thereto of the said First and Second Schedules shall apply with the substitution for references to a fire authority of references to an authority which on the appointed day will become a fire authority. [782]

*Sub-s. (5).—*As to the operation of this subsection in relation (a) to fire authorities which are county councils, see paragraph 3 of Sched. I, *post*, and (b) to fire authorities constituted by combination schemes, see paragraph 1 (3) of Sched. II, *post*.

*Sub-s. (7) and Sched. I.—*The transfer to county boroughs will be a comparatively simple matter for not only are they single-tier authorities but they were fire authorities until the constitution of the National Fire Service in August, 1941. County councils, on the other hand, include numerous county district councils and have no fire service history behind them, the county district councils being the previous fire authorities. The object of this subsection, in conjunction with Sched. I, *post*, is therefore to ensure that county district councils are fully consulted on the fire brigade establishments proposed, without derogating from the responsibility and control of the county councils.

The procedure to be followed in counties between the passing of the Act (July 31, 1947) and the appointed day for transfer to the new fire authorities (April 1, 1948, for England and Wales; S.I. 1948 No. 325) has been thus summarised by the Home Secretary:—

"First will come the appointment of a fire brigades committee, with instructions to it to prepare an establishment scheme; secondly, the preparation by the fire brigade committee of a draft establishment scheme to be circulated for observations to all district councils in the county; thirdly, the consideration of any observations received within a month from district councils and the submission of a final scheme to the county council; fourthly, before the county council can submit a scheme to the Secretary of State, it will have to obtain a report from its finance committee. . . . All this must be done in time to enable the county council to submit a scheme, together with any suggestions made by the district councils, and its observations thereon, to the Secretary of State by January 1, 1948, or such later date as the Secretary of State may, in special circumstances, allow" (H. of C. Official Report, S.C.B., May 22, 1947, cols. 358–359). The Home Secretary made it clear that no progress with the preparation of a scheme would be possible until the future chief fire officer had been selected.

At the time of going to press, centralised arrangements for the appointment of all chief fire officers are being put into operation.

*Public local inquiries.*—S. 290 (2), (3) and (5) of the Local Government Act, 1933 (26 Halsbury's Statutes 459), applies to any inquiry held under this section (s. 33 (2), *post*, and see note thereto).

*Sub-s. (9) and Sched. II.—*The practical working of this subsection and Schedule was similarly explained by the Home Secretary (H. of C. Official Report, S.C.B., May 22, 1947, cols. 359–360):—

"The second new Schedule provides, in fact, for establishment schemes forming part of combination schemes. If establishment questions were left to an establishment scheme, it could not be made until the combined fire authority had been set up. This might cause unnecessary delay, particularly since no practical discussions of combination proposals can take place without including discussions as to the establishment for the combined brigade. The



duty of consulting district councils in the case of any proposal for a combination scheme which includes a county, will rest in the case of voluntary combinations, jointly upon all the fire authorities proposing to combine and, in the case of a compulsory combination scheme, upon the Secretary of State. As the discussion in these cases may be more protracted than in the case of any combined fire authorities—because one is bringing in more people in a wider area—it may be necessary in those cases to allow a slightly longer term. Para. [1 (3)] of the Schedule dealing with the combined fire authorities provides that subsection (5) of the new Clause is not to apply in relation to a fire authority constituted by a combination scheme. The reason for this is that since establishment questions are dealt with in a combination scheme, the necessary provision must have been made by the time the combined authority has come into existence. If, in the preparatory stage, it becomes clear that a proposed combination scheme will not be in operation by the appointed day, the component authorities will have a chance of preparing their individual schemes for the interim period, and if they fail to do so, the Secretary of State is empowered to act under sub-s. (5) of the Clause. It follows that it will be necessary to decide sufficiently early whether a proposed combination scheme can or cannot be brought into operation by the appointed day, so that if it cannot there will be sufficient time for the component authorities to prepare their interim schemes. I am in a position to give assurances that this can be given effect to if the circumstances should arise."

*Appointed day.*—By s. 38 (1), *post*, this means such day as the Secretary of State may by order appoint. April 1, 1948, has been so appointed for England and Wales (see S.I. 1948 No. 325).

**20. Fire brigade committees in counties.**—(1) Every fire authority (other than the London County Council) which is the council of a county shall constitute a fire brigade committee in accordance with the following provisions of this section, and—

(a) shall refer to the fire brigade committee for report and recommendation all matters relating to the authority's functions under this Act, except such matters as the authority may with the approval of the Secretary of State determine, and shall unless in their opinion the case is urgent receive and consider the report of the committee with respect to any matters referred to the committee before taking action in relation to those matters ;

(b) may delegate to the fire brigade committee, either with or without conditions or restrictions, any of the authority's functions under this Act other than powers of raising a rate or borrowing money. [783]

(2) Until the coming into force in accordance with the provisions of this Act of a scheme (hereafter in this Act referred to as a "management scheme") determining the constitution of a fire brigade committee under this section, the constitution thereof shall be such as may be determined by the fire authority, and thereafter such as may be determined by such a scheme. [784]

(3) As soon as may be after the appointed day every such fire authority as aforesaid shall make a management scheme in accordance with the provisions in that behalf of the First Schedule to this Act. [785]

(4) A management scheme shall provide for the appointment to a fire brigade committee by the fire authority of such number of members of that authority as may be specified in the scheme, and for the appointment to the committee by or on behalf of councils of county districts comprised in the area of the fire authority of such less number of persons representing those councils as may be so specified. [786]

(5) A management scheme shall be submitted to the Secretary of State, and shall come into force when approved by him, either as submitted or subject to such modifications as he may direct. [787]

(6) A management scheme may be varied by a subsequent scheme made in the like manner and subject to the like provisions as the scheme varied. [788]

(7) If as respects the area of any fire authority such as is mentioned in subsection (1) of this section—

(a) before the expiration of three months from the appointed day, or such later date as the Secretary of State may in special circumstances allow, no management scheme has been submitted to the Secretary of State, or

- (b) at any time it appears to the Secretary of State, whether on the representations of the council of any county district comprised in the area of the fire authority or otherwise, that the management scheme in force is not satisfactory,

the Secretary of State may, after affording to the first authority and to every such council as aforesaid an opportunity of making representations to him, make a scheme. [789]

(8) The provisions of subsections (4), (6) and (7) of this section shall apply to a scheme made under the said subsection (7) as if it were a management scheme submitted to and approved by the Secretary of State. [790]

(9) The foregoing provisions of this section shall, subject to the provisions of the Second Schedule to this Act, apply to a fire authority—

- (a) which is constituted by a combination scheme,  
 (b) the area of which includes one or more counties, other than the County of London,

as they apply to such authorities as are mentioned in subsection (1) of this section. [791]

*Fire brigade committees.*—The object of the present section is to ensure that, notwithstanding their ceasing to be fire authorities, county district councils shall continue to have a say in the fire arrangements for the county. In the setting up of fire brigade committees it is intended to broaden the basis of responsibility by including in the fire brigade committees a minority of representatives of county district councils; by this means the committees will be more fully representative, while the majority control will remain in the county councils.

The first four lines of para. (a) of sub-s. (1) are clearly designed for the protection of county district councils. Their statutory right to be represented on the county fire brigade committees would be of limited value if those committees were not invested with real powers. All fire brigade matters must, therefore, be referred to the committees, except where exclusion is approved by the Secretary of State.

*Management schemes.*—Local diversities of circumstance are great and the machinery of management schemes has been chosen as that best-suited to produce arrangements appropriate to the particular localities. Large district councils will be entitled to at least one direct representative on the county fire brigade committee but smaller councils will probably be grouped together, the group sending (say) two, three or four members to the committee. The procedure in relation to management schemes and their approval and the powers of the Secretary of State in default are not unlike those applicable to reinforcement schemes (s. 2, *ante*) and combination schemes (ss. 5 and 6, *ante*). Note that the provisions of Schedules I and II, *post*, apply to management schemes for counties and for combined fire authorities respectively subject to the detailed provisions of this section.

*Appointed day.*—By s. 38 (1), *post*, this means such day as the Secretary of State may by order appoint. April 1, 1948, has been so appointed for England and Wales (see S.I. 1948 No. 325).

**21. Standards of training and equipment.**—The Secretary of State may, after consultation with the Central Fire Brigades Advisory Council constituted under this Act, by regulations provide for the observance by fire authorities of such requirements with respect to—

- (a) standards of training for members of fire brigades maintained in pursuance of this Act;  
 (b) design or performance of equipment for such brigades,

as appear to him to be necessary to secure efficient fire services. [792]

*Central Fire Brigades Advisory Council.*—See s. 29, *post*.

*Regulations.*—Up to the time of going to press, no regulations under this section had been made. Any such regulations require to be laid before Parliament (see s. 35, *post*, and note thereto).

*Standardisation.*—The importance of this section, which replaces s. 22 of the Fire Brigades Act, 1938 (31 Halsbury's Statutes 600), with regard to standards of training, uniform and equipment, needs no emphasis. Lack of uniformity in threads and couplings, in particular, has been a frequent source of difficulty which the use of adaptors has only reduced. The ideal aimed at is not a complete uniformity, as this might tend to prevent improvement in design, but a fair working standardisation.

*Failure to comply.*—The present section is one of several designed to provide central supervision of the efficiency of the local fire services. Failure to observe requirements laid down under this section may involve a withholding of the Exchequer grant (see s. 25, *post*, and notes thereto).

**22. Provision by Secretary of State of equipment.**—The Secretary of State may in accordance with arrangements approved by the Treasury provide, for purchase by any fire authority desiring to avail themselves of the arrangements, equipment for the discharge of the functions of fire authorities under this Act. [793]

*Desiring to avail themselves.*—There is no obligation on local authorities to avail themselves of the central purchase facilities available under this section, though many will find it convenient to do so, particularly in view of possible requirements as to standardisation under s. 21, *ante*. It is not the intention to set up within the Home Office a supply department for the purposes of this section; arrangements will be carried out by an existing supply department of the Government, probably the Ministry of Supply.

*Definitions.*—For definitions of “equipment” and “fire authority,” see s. 38 (1), *post*.

**23. Training centres.**—(1) The Secretary of State may establish and maintain—

- (a) a central training institution; and
- (b) one or more local training centres,

for providing courses of instruction in matters relating to fire services. [794]

(2) The arrangements to be made for the central training institution established under this section shall secure that the institution shall be under the general direction of a board—

- (a) consisting as to half of persons appointed by the Secretary of State and as to the remainder of persons appointed by such bodies as appear to the Secretary of State to represent the interests of fire authorities, and

(b) having as chairman such member of the board as may be selected by the other members with the approval of the Secretary of State, and that before appointing the person having control of the administration of the institution the Secretary of State shall consult the board. [795]

(3) A fire authority may establish and maintain training centres for providing courses of instruction for members of their own or other fire brigades and for training persons for service in fire brigades. [796]

*Background of the section.*—This section, which is permissive rather than mandatory, reproduces in modified form s. 20 of the Fire Brigades Act, 1938 (31 Halsbury's Statutes 599). A training college was set up at Saltdean during the war, and this it is intended to continue, though possibly on other premises. Local training facilities will also continue but the emphasis seems likely to be on the national training college.

An amendment was moved in Standing Committee of the House of Commons (see H. of C. Official Report, S.C.B., May 15, 1947, cols. 284-287) to the effect that local training centres should not be provided by the Secretary of State, but it was withdrawn upon an assurance being given that the Government did not seek to impose on fire authorities centres managed and run by the State.

*Constitution and cost.*—The power of appointing half the members of the board given to the representatives of fire authorities is not unrelated to the contributions by those authorities to the cost of the national training arrangements under s. 25 (3), *post*, by which deductions from the grant in aid are authorised.

**24. Inspectors of Fire Brigades.**—(1) For the purpose of obtaining information to the manner in which fire authorities are performing their functions under this Act and as to technical matters relating to those functions, inspectors may be appointed by His Majesty, and the Secretary of State may appoint assistant inspectors and other officers. [797]

(2) The Secretary of State may pay to persons appointed under this section such remuneration as he may with the approval of the Treasury determine. [798]

*Effect of section.*—The provisions of this section closely follow those of s. 19 of the Fire Brigades Act, 1938 (31 Halsbury's Statutes 599). While the section provides for the appointment of inspectors (apparently with a view to deciding whether fire authorities have fulfilled the conditions subject to which grants in aid are payable under s. 25, *post*), the persons so appointed are given no special powers to enable them to obtain information required. The appointment of the inspectors themselves now lies with the Crown and not with the Secretary of State as under the Act of 1938. The cost of the inspectors and other officials within the contemplation of the section is to be borne by the Government and not by the fire authorities.

**25. Grants to fire authorities.**—(1) The Secretary of State may with the consent of the Treasury make regulations providing for the payment by him to the councils of counties and county boroughs, and to authorities constituted by combination schemes, of annual grants in respect of expenditure incurred by them in connection with the provision of fire services of amounts not exceeding twenty-five per cent. of the expenditure. [799]

(2) Regulations made under the last foregoing subsection may make provision whereby the payment of grants in pursuance thereof is dependent upon the fulfilment of such conditions as may be determined by or under the regulations. [800]

(3) Regulations made as aforesaid may provide for the deduction from grants to any authority of amounts not exceeding the appropriate fraction of so much of the expenditure incurred by the Secretary of State under section twenty-three of this Act as is apportioned to the authority in accordance with the regulations.

In this subsection the expression "appropriate fraction" means the fraction of any expenditure of an authority incurred by them in the exercise of their functions under this Act which, after allowing for the grants provided under subsection (1) of this section but not for the deductions therefrom under this subsection, would fall ultimately to be borne by the authority. [801]

*Regulations.*—Up to the time of going to press, no regulations under this section had been made.

Any such regulations require to be laid before Parliament (see s. 35, *post*, and note thereto).

*Not exceeding twenty-five per cent.*—Prior to August, 1941, the whole of the cost of the fire services (except in the case of the London County Council) fell upon the fire authorities constituted under the Fire Brigades Act, 1938 (31 Halsbury's Statutes 585).

After the transfer of fire functions to the National Fire Service the fire authorities continued to bear a large proportion of the cost of this organisation, calculated on the basis of their fire expenditure during a standard year. It may be noted that none of the associations of local authorities has expressed satisfaction with the amount of the grant, which is one-half of that payable for police services.

The Home Secretary said of the grant in aid during the Second Reading debate in the House of Commons on March 27, 1947:—

"It was originally intended that this grant should vary as between authority and authority. We have found it simpler to deal with it on the basis of a flat rate grant, and the necessary adjustments with regard to the richness and poverty of an area will be dealt with in the revision of the block grant" (435 H. of C. Official Report 1438-1439).

Under the present Act the Secretary of State has no power, as he had through the fire service board machinery of ss. 11-13 of the Act of 1938, to supersede a fire authority whose service he regards as inefficient; but pressure can be brought to bear by withholding or making reductions in the grant in aid if a service in a given area is inefficient (sub-s. (2), *supra*).

*S. 23 of this Act.*—See *ante*. This section relates to the provision of training centres.

#### *Pensions, etc.*

**26. Firemen's Pension Scheme.**—(1) The Secretary of State may by order bring into operation a scheme, to be known as the Firemen's Pension Scheme, whereby provision is made, subject to the provisions of this section and of the Scheme, for the payment by fire authorities and such other authorities as may be specified in the Scheme of pensions, allowances and gratuities to persons employed as members of fire brigades maintained in pursuance of this Act who retire from such employment on or after the appointed day or die on or after the appointed day while so employed, and to their widows, children and dependants. [802]

(2) The Firemen's Pension Scheme (hereafter in this and the next following section referred to as "the Scheme") may include provision—

- (a) for defining the classes of persons employed as aforesaid in respect of whose service awards, or awards of any class specified in the Scheme, may be made under the Scheme, and in particular for excluding in relation to any such awards or class of awards persons who are not wholly and permanently so employed or who are so employed on such ancillary duties as may be specified in the Scheme,

and for treating, for all or any of the purposes of the Scheme, employment in Great Britain or elsewhere on duties connected with the provision of fire services, being employment (otherwise than as a member of a fire brigade maintained in pursuance of this Act) of such classes as may be specified in the Scheme, as if it were employment as a member of such a brigade ;

- (b) for reckoning, for all or any of the purposes of the Scheme, such employment, whether before or after the appointed day (other than employment as a member of a fire brigade maintained in pursuance of this Act) as may be specified in the Scheme as if it were employment as a member of such a brigade, either unconditionally or subject to such conditions as may be so specified and either as respects the whole of service in employment so specified or as respects such fraction thereof as may be so specified ;
- (c) for the making by persons in respect of whose service awards may be made under the Scheme of such contributions as may be specified by the Scheme, and, in such circumstances as may be so specified, for the repayment of contributions so made or their application in such manner and for the benefit of such persons as may be so specified ;
- (d) for substituting, for all or any of the purposes of the Scheme, the Secretary of State for a fire authority in relation to any employment specified under paragraph (b) of this subsection ;
- (e) for the making to a fire authority by the Secretary of State or another fire authority, or by any other authority by which a person has been employed in employment specified under paragraph (b) of this subsection or which has incurred any liability in respect of the payment of a pension in the event of a person's retirement from employment so specified of payments in respect of previous service (whether before or after the appointed day) on a person's entry on employment with the fire brigade maintained by the first-mentioned fire authority, and for the making to the Secretary of State by a fire authority or any such other authority as aforesaid of payments in respect of previous service (whether before or after the appointed day) on a person's entry on employment specified under paragraph (b) of this subsection ;
- (f) for the reimbursement of payments under the last foregoing paragraph out of any superannuation fund to which contributions have been made in respect of the previous service to which the payments related ;
- (g) for the making, where a person enters on employment with a fire authority in a case where no payment falls to be made under paragraph (e) of this subsection, of payments in respect of previous service with that authority out of any superannuation fund to which contributions have been made in respect of the previous service ;
- (h) for the conditions as to evidence or otherwise subject to which any award under the Scheme may be made, for the manner in which any question specified in the Scheme arising under the Scheme is to be determined, and for appeals from determinations of any such question ;
- (i) for excluding or modifying, in the case of an injury in respect of which an award is made under the Scheme, being an injury sustained in the execution of duty in such circumstances as may be specified in the Scheme, any other right against the Crown or other authority in whose employment the injury occurred to compensation or damages in respect of the injury or the consequences thereof,

so however that no provision made by virtue of this paragraph shall affect any right under the National Insurance (Industrial Injuries) Act, 1946, or the National Insurance Act, 1946 ;

- (j) for such incidental and supplemental matters as appear to the Secretary of State expedient for the purposes of the Scheme, including provisions as to funds for defraying liabilities under the Scheme and provision for the like purposes as under the enactments in the Fire Brigade Pensions Act, 1925, specified in the first column of the Third Schedule to this Act (which relate to the matters specified in the second column of that Schedule) was made in relation to awards under the said Act of 1925.

In this section the expression "employment" includes engagement in any service. [803]

(3) The maximum pension under the Scheme shall not be provided for a person unless he has been engaged in service which is to be reckoned for the purpose of his pension under the Scheme for a period of not less than thirty years, and no pension shall be provided under the Scheme for any person on retirement unless—

- (a) he has been engaged in such service as aforesaid for a period of not less than twenty-five years ; or
- (b) his retirement is caused by such incapacity or infirmity of mind or body (occasioned otherwise than as mentioned in the next following paragraph) as may be specified in the Scheme, and he has been engaged in such service for a period of not less than ten years ; or
- (c) his retirement is caused through incapacity of mind or body occasioned by an injury received in the execution of his duty without his own default or in such circumstances that the Scheme applies in like manner as if it had been occasioned by an injury so received ; or
- (d) he is compelled to retire on the ground of age. [804]

(4) If a person obtains or attempts to obtain for himself or any other person—

- (a) any award under the Scheme, or
- (b) any sum in respect of the repayment or application of contributions made under the Scheme,

by means of any false declaration, false certificate, false representation, false evidence or personation or by malingering or feigning disease or infirmity or by maiming or injuring himself, or causing himself to be maimed or injured, or otherwise producing disease or infirmity, or by any other fraudulent conduct, he shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding twenty-five pounds, and (without prejudice to the provisions of paragraph (j) of subsection (2) of this section) the Scheme may authorise, in the case of a person who has been convicted of an offence under this subsection, the forfeiture, in whole or in part, of any award or sum so obtained. [805]

(5) The Scheme may be varied by a subsequent order of the Secretary of State under this section. [806]

(6) Any order under this section shall be made with the approval of the Treasury, and after consultation with the Central Fire Brigades Advisory Council. [807]

*Effect of section.*—This is the first of three sections providing for a new uniform pension scheme for firemen in place of the previous divergent schemes where the period of service for the maximum pension of two-thirds varied from twenty-eight to forty years. The Scheme, to be known as the Firemen's Pension Scheme, is to be made by order of the Secretary of State with the approval of the Treasury and after consulting the Central Fire Brigades Advisory Council. In addition, any such order must be laid before Parliament (s. 35, *post*, and see note thereto). The section is mainly enabling in character and does not actually



prescribe the contents of the Scheme, except in sub-s. (3), *ante*, by which maximum pension rights under the Scheme are not to accrue until after thirty years' pensionable service and no pension at all is to be provided except in the four cases specified. Sub-s. (4), *ante*, provides penalties for a comprehensive list of offences in regard to pensions, and sub-s. (5), *ante*, allows for variation of the Scheme in the light of experience. It seems likely that the Scheme, which may follow the main lines of the police pensions scheme, will be restricted to fire-fighting personnel of the brigades, and that persons employed for clerical or administrative duties will be covered by other pension arrangements.

*Appointed day.*—By s. 38 (1), *post*, this means such day as the Secretary of State may by order appoint. April 1, 1948, has been so appointed for England and Wales (see S.I. 1948 No. 325).

*Sub-s. (2) (b) to (g).*—These paragraphs will allow the Firemen's Pension Scheme to make provision for a wide variety of circumstances resulting from the complexity of the previous law and the introduction of the National Fire Service. By paragraph (b), the Scheme may specify certain categories of service as being available for pension purposes in the same way as service with one of the new fire authorities. Paragraph (c) will enable the Scheme to provide for payments in the nature of transfer values in respect of transfers from ordinary employment with a fire authority to a class of employment specified under paragraph (b) and *vice versa*, while paragraph (f) provides for the reimbursement of these payments out of superannuation funds. The probable scope of paragraph (g) is not entirely clear, but it would cover, for example, the case of a superannuable employee of a county borough who joined the fire brigade maintained by that authority.

*National Insurance (Industrial Injuries) Act, 1946.*—39 Halsbury's Statutes 322. For the general provisions for injury benefit under this Act, which replaces the Workmen's Compensation Acts, 1925 to 1945, see ss. 7–11 of the said Act.

*National Insurance Act, 1946.*—39 Halsbury's Statutes 412. For the general provisions for benefit under this Act, which sets up a comprehensive system of social insurance, see Part II thereof.

*Fire Brigade Pensions Act, 1925.*—13 Halsbury's Statutes 1095. For specific references, see note to Sched. III, *post*.

*Penalties under sub-s. (4).*—As the maximum term of imprisonment on summary conviction does not exceed three months, the accused will have no right to claim trial by jury under s. 17 of the Summary Jurisdiction Act, 1879 (11 Halsbury's Statutes 329). It will be for the Scheme to declare the court or body authorised to forfeit the awards or sums referred to at the end of the subsection.

*Central Fire Brigades Advisory Council.*—See s. 29, *post*.

## 27. Firemen's Pension Scheme to supersede other statutory schemes.—

(1) As respects any person retiring on or after the appointed day from employment as, or employment which for the purposes of the Scheme is to be treated as employment as, a member of a fire brigade maintained in pursuance of this Act, or dying on or after the appointed day while in such employment, the Scheme shall, subject to the provisions of this section, have effect to the exclusion of any other provision for pension, allowance or gratuity in respect of such employment contained in or in force under any enactment. [808]

(2) Where—

- (a) immediately before the appointed day there are in operation by virtue of any enactment (other than an enactment contained in the Fire Brigade Pensions Act, 1925), any arrangements for the grant of pensions, allowances or gratuities in respect of members of a fire brigade maintained in pursuance of the Fire Brigades Act, 1938 (in this subsection referred to as "the former brigade"); and
- (b) the Government Actuary certifies that the Scheme, if modified by reference to the arrangements so as to have effect subject to such modifications as are mentioned in the next following subsection, would be on the whole not less favourable than the Scheme not so modified,

then if any person—

- (i) who was a member of the former brigade immediately before the eighteenth day of August, nineteen hundred and forty-one; or
- (ii) who by virtue of having been a member of the former brigade was designated under paragraph (1) (b) of regulation 3 of the National Fire Service (Preservation of Pensions) (Police Firemen) Regulations, 1941, as a person in whose case those regulations should have effect; or



- (iii) who immediately before the said eighteenth day of August was engaged in service or work in such circumstances that under the Police and Firemen (War Service) Act, 1939, his service or work fell to be treated as a period of approved service in the former brigade ; and
- (iv) who in any case becomes on the appointed day or on the termination thereafter of such service or work as aforesaid a member of the former brigade,

gives notice in that behalf to such authority and within such period as may be specified by the Scheme, the Scheme shall have effect in his case, so long as he remains a member of the former brigade, subject to the said modifications. [809]

(3) The modifications referred to in the last foregoing subsection are such modifications as will secure that subject to the following provisions of this section—

- (a) as respects superannuation awards, the Scheme contains the like provisions in respect of the persons entitled to awards, the conditions entitling persons to awards, and the amounts of awards, as the arrangements mentioned in paragraph (a) of the last foregoing subsection ;
- (b) as respects injury awards, an authority making an award under the Scheme may, in any case in which it appears to them that an award under the said arrangements would have exceeded the award under the Scheme, increase the award under the Scheme by an amount not greater than the excess, as estimated by the authority ;
- (c) as respects the rates of contributions to be made by persons in respect of whose service awards may be made, the rates shall be the same as under the said arrangements, subject to such abatement as may be provided by the Scheme for offsetting any provisions of the Scheme having effect by virtue of subsection (5) or (6) of this section in cases where those provisions apply.

In this subsection the expression “injury award” means a pension, allowance or gratuity in respect of death or incapacity of mind or body occasioned either by an injury received in the execution of duty without the default of the person injured or in such circumstances that the Scheme, apart from the foregoing modifications, applies in like manner as if it had been occasioned by an injury so received ; and “superannuation award” means a pension, allowance or gratuity other than an injury award. [810]

(4) For the purposes of subsection (2) of this section, a fire brigade maintained in pursuance of the Fire Brigades Act, 1938, for any area and a fire brigade maintained in pursuance of this Act for that area, or an area including that area, shall be treated as one. [811]

(5) Nothing in subsection (1) of this section shall affect the operation of the National Insurance (Industrial Injuries) Act, 1946, or the National Insurance Act, 1946, but the Scheme may provide for the reduction or withholding of awards under the Scheme in cases where awards are provided for in respect of the same matters under either of the said Acts. [812]

(6) The Secretary of State may by regulations provide, in the event of the appointed day for the purposes of the National Insurance (Industrial Injuries) Act, 1946, falling earlier than the appointed day for the purposes of this Act, for the reduction or withholding of awards under the Fire Brigade Pensions Act, 1925, or any such arrangements as are mentioned in paragraph (a) of subsection (2) of this section in cases where awards are provided for in respect of the same matters under the said Act of 1946. [813]

*Effect of section.*—This is the second of three sections providing for a new uniform pension scheme in place of those previously in force. Like s. 26, *ante*, the present section applies to claims arising on or after the appointed day, expected to be April 1, 1948, in the case of England and Wales (see note to s. 4, *ante*), and makes detailed provision for superseding earlier statutory schemes in cases where the Firemen's Pension Scheme applies, subject to the limited right of election under sub-s. (2), *ante*.

*Under any enactment.*—The pension rights of fire personnel (other than police firemen who are in a special position) are variously governed by :

- (a) the Fire Brigade Pensions Act, 1925 (13 Halsbury's Statutes 1095) as amended by ss. 16 and 17 of the Fire Brigades Act, 1938 (31 Halsbury's Statutes 596), the Fire Services (Emergency Provisions) Act, 1941 (34 Halsbury's Statutes 223), and numerous regulations thereunder;
- (b) in London, s. 8 of the Metropolitan Fire Brigade Act, 1865, and s. 44 of the London County Council (General Powers) Act, 1895 (11 Halsbury's Statutes 999, 1219);
- (c) the Local Government Superannuation Act, 1937 (30 Halsbury's Statutes 385), replacing the Local Government and Other Officers' Superannuation Act, 1922 (10 Halsbury's Statutes 863); and
- (d) pension schemes under local Acts.

*Sub-ss. (2) and (3).*—These subsections are not easy to understand, in view of the fact that the right of election is not between the previous arrangements and the Firemen's Pension Scheme but between the latter as generally applying and as modified in a given way. In the circumstances the Home Secretary's explanation to the Standing Committee of the House of Commons is worth quoting despite its length :—

"Subject to the conditions in Clause 27 (2) it was desired to allow a serving man a clear option between his present scheme and the new Firemen's Pension Scheme, but closer examination of existing schemes has revealed certain difficulties, and, in particular, the fact that the injury awards in some of them are closely bound up with Workmen's Compensation. The Workmen's Compensation Acts are, however, expected to come to an end next year, at about the same time as the introduction of the new Firemen's Pension Scheme, so that some amendment of the existing scheme would have to be made, even if no firemen's pension legislation were contemplated. In these circumstances, it is not possible to give the serving men a clearcut option, since their existing scheme is bound to be altered to take account of the disappearance of Workmen's Compensation.

"Therefore, the first three Amendments on the Order Paper have been drafted to provide for an option between the new Firemen's Pension Scheme, on the one hand, and a modified version of the existing scheme, on the other. The modified existing scheme will include, firstly, the existing superannuation rights of the men's present scheme, that is, for awards for injuries not arising out of duty; secondly, the injury awards of the new Firemen's Pension Scheme, and thirdly, a discretion conferred on the local authority to supplement any injury award up to the level of the award which they consider would have been made under the old local scheme. It will be noted that, in this connection, the injury provisions of the existing schemes provide, broadly speaking, for a minimum guaranteed award which may be increased at the discretion of the local authority. I understand that this discretion, in practice, was widely, though not always consistently, used. It is intended that the injury provisions of the new Firemen's Pension Scheme shall be at least as favourable as the minimum rates under existing schemes, and, in some cases, they will be considerably more favourable. Therefore, although the proposed Amendment looks rather as though the serving man's existing rights are being tampered with, what is proposed, in practice, is to guarantee the man at least as much as he would be guaranteed under his old scheme, and, in addition, to confer on the local authority the discretion to increase injury awards, which they already possess and exercise" (H. of C. Official Report, S.C.B., May 20, 1947, cols. 311-312).

*Fire Brigade Pensions Act, 1925.*—13 Halsbury's Statutes 1095.

*Fire Brigades Act, 1938.*—31 Halsbury's Statutes 585.

*Not less favourable.*—Compare the use of this phrase in the Workmen's Compensation Act, 1925, s. 31 (1) (a) (11 Halsbury's Statutes 571), with regard to the substitution of liability under a scheme for liability under that Act.

*National Fire Service (Preservation of Pensions) (Police Firemen) Regulations, 1941.*—S. R. & O., 1941, No. 1271. See also S. R. & O., 1945, Nos. 1649 and 1650, and S. R. & O., 1947, No. 824.

*Police and Firemen (War Service) Act, 1939.*—32 Halsbury's Statutes 1149.

*National Insurance (Industrial Injuries) Act, 1946, and the National Insurance Act, 1946.*—39 Halsbury's Statutes 322 and 39 Halsbury's Statutes 412. The "appointed day" for the purposes of the former Act is July 5, 1948 (S.I. 1948 No. 53).

*Regulations of the Secretary of State.*—Up to the time of going to press the occasion for regulations under sub-s. (6) of this section had not arisen and accordingly no such regulations had been made.

Any regulations under the subsection require to be laid before Parliament (s. 35, *post*, and see notes thereto).

**28. Supplementary provisions as to preservation of pensions, etc.**—(1) The Secretary of State may by regulations, applying to such classes of persons as may be specified in the regulations,—

- (a) being pensionable members of fire brigades who whether before or after the passing of this Act entered or enter on employment in the civil service of the Crown or other pensionable employment under a local authority or any police authority not being a local authority, or

- (b) being persons (other than pensionable members of fire brigades) employed in the National Fire Service who on the appointed day enter on employment in the civil service of the Crown or, otherwise than as members of fire brigades, on pensionable employment under a local authority or any such police authority as aforesaid,

make provision for securing that their former employment shall, to such extent and subject to such conditions as may be specified in the regulations, be treated for pension purposes as if it were the employment on which they entered or enter as mentioned in either of the two foregoing paragraphs.

[814]

(2) In the case of persons transferring from one employment to another in such circumstances that under the last foregoing subsection service in the former employment is treated for pension purposes as if it were service in the latter employment, regulations under this section may provide for the making of payments in respect of previous service—

- (a) by the authority by whom any such person was employed in the former employment, to the authority to whose employment he was transferred or to a pension fund out of which awards may be made to him in respect of his service in the employment to which he was transferred ; or
- (b) out of a pension fund from which, apart from the transfer, awards might have been made to him in respect of his service in the former employment, to the authority to whose employment he was transferred or to such a fund as is mentioned in paragraph (a) of this subsection. [815]

(3) In this section—

the expression “ pensionable members of fire brigades ” means persons in whose case provision for pension purposes is made by or under any enactment in respect of their employment as members of fire brigades, including employment which for pension purposes is treated as employment as members of fire brigades ;

the expression “ pensionable employment ” means employment in service in respect of which provision for pension purposes is made by or under any enactment ;

the expression “ pension purposes ”, in relation to any employment, means the purposes of authorising pensions, gratuities or other awards in respect of that employment. [816]

*Effect of section.*—This is the third of three sections designed to provide a uniform pension scheme for firemen ; the subject-matter of this particular section relates to the preservation of existing pension rights on two categories of transfer, namely :—

- (a) transfers of pensionable members of fire brigades, at any time before or after the passing of the Act, to pensionable employment in the Civil Service or with a local authority or police authority ; and
- (b) transfer on the appointed day of National Fire Service personnel, not being pensionable members of fire brigades, to the Civil Service or to pensionable non-fire duties with a local authority or police authority.

A transferred fireman is to draw the whole of his pension from the authority to whose service he is transferred, the amount of the pension presumably being based on his rate of pay at retirement as under the Local Government Superannuation Act, 1937 (30 Halsbury's Statutes 385).

Sub-s. (2), *supra*, provides for the payment by the former employing authority of a “ transfer value ” by means of which they will avoid the necessity of providing for a contingent liability in the future. By these provisions the regulations will place transferred firemen in substantially the same position as other local government employees in the service of the authorities employing them on their retirement.

*Regulations of the Secretary of State.*—Up to the time of going to press no regulations under this section had been made.

Any such regulations require to be laid before Parliament (s. 35, *post*, and see note thereto). *Passing of this Act.*—July 31, 1947.

*Civil service of the Crown.*—The reason for the inclusion of transfers to the civil service is that cases may arise where inspectors of fire brigades, and, in particular, chief inspectors, may more properly be governed by the Superannuation Acts, 1834 to 1935 (16 Halsbury's

Statutes 122, 179, 186, 238, 551, 566, 686 and 772; 13 Halsbury's Statutes 374; and 28 Halsbury's Statutes 295) than the Firemen's Pension Scheme (see H. of C. Official Report, S.C.B., May 20, 1947, col. 315).

### *Miscellaneous and General*

**29. Central Fire Brigades Advisory Council.**—(1) The Secretary of State shall constitute a Council to be called the Central Fire Brigades Advisory Council, for the purpose of advising him on any matters as to which he is required by this Act to consult the Council or any other matter arising, otherwise than under section seventeen of this Act, in connection with the operation of this Act which the Council have taken into consideration, whether on a reference from the Secretary of State or otherwise. [817]

(2) Subject to the provisions of the next following subsection, the Council shall consist of a chairman appointed by the Secretary of State and of such number of other persons so appointed as the Secretary of State may determine, being persons appointed as representing the interests of fire authorities and of persons employed as members of fire brigades maintained in pursuance of this Act. [818]

(3) In addition to the persons mentioned in the last foregoing subsection the Secretary of State may, if he thinks fit, appoint as members of the Council, either generally or for the consideration of any particular matter, such other persons appearing to him to have special qualifications as he may determine. [819]

(4) The procedure (including the quorum) of the Council shall, subject to any directions of the Secretary of State, be such as the Council may determine. [820]

(5) The Secretary of State may defray any expenses authorised by him with the consent of the Treasury to be incurred by the Council. [821]

*Effect of section.*—There are to be two Central Fire Brigades Advisory Councils, one for England and Wales set up under this section and one for Scotland established under s. 36 (18) of this Act. In each case the Council's functions are purely advisory.

*Required to consult the Council.*—The Secretary of State is required to consult the Council under ss. 1 (3), 14 (6), 18 and 21, *ante*. He may also, if he so desires, consult it upon other matters arising under the Act, except those arising under s. 17 (see *infra*).

*S. 17 of this Act.*—See *ante*. This is the section setting out the negotiating machinery by which pay, hours of duty and other conditions of service are to be determined. In this machinery the Advisory Council has no place.

*Or otherwise.*—These words make it clear that the Advisory Council has the power to tender advice on their own initiative, without prior request from the Secretary of State on matters arising under the Act.

*Special qualifications.*—In the course of a statement in Standing Committee of the House of Commons, the Home Secretary announced that under sub-s. (3), *supra*, he proposed to include members representing the water undertakings and the county district councils as well as technical experts able to assist in fire-fighting matters (H. of C. Official Report, S.C.B., May 20, 1947, col. 320).

*Defraying expenses.*—On the same occasion the Home Secretary made it clear that the whole of the expenses of the Advisory Councils would be borne by the Exchequer.

**30. Powers of firemen and police in extinguishing fires.**—(1) Any member of a fire brigade maintained in pursuance of this Act who is on duty, any member of any other fire brigade who is acting in pursuance of any arrangements made under this Act, or any constable, may enter and if necessary break into any premises or place in which a fire has or is reasonably believed to have broken out, or any premises or place which it is necessary to enter for the purposes of extinguishing a fire or of protecting the premises or place from acts done for fire-fighting purposes, without the consent of the owner or occupier thereof, and may do all such things as he may deem necessary for extinguishing the fire or for protecting from fire, or from acts done as aforesaid, any such premises or place or for rescuing any person or property therein. [822]

(2) Any person who wilfully obstructs or interferes with any member of a fire brigade maintained in pursuance of this Act who is engaged in

operations for fire-fighting purposes shall be liable on summary conviction to a fine not exceeding twenty-five pounds. [823]

(3) At any fire the senior fire brigade officer present shall have the sole charge and control of all operations for the extinction of the fire, including the fixing of the positions of fire engines and apparatus, the attaching of hose to any water pipes or the use of any water supply, and the selection of the parts of the premises, object or place where the fire is, or of adjoining premises, objects or places, against which the water is to be directed. [824]

(4) Any water undertakers shall, on being required by any such senior officer as is mentioned in the last preceding subsection to provide a greater supply and pressure of water for extinguishing a fire, take all necessary steps to enable them to comply with such requirement and may for that purpose shut off the water from the mains and pipes in any area; and no authority or person shall be liable to any penalty or claim by reason of the interruption of the supply of water occasioned only by compliance of the water undertakers with such a requirement. [825]

(5) The senior officer of police present at any fire, or in the absence of any officer of police the senior fire brigade officer present, may close to traffic any street or may stop or regulate the traffic in any street whenever in the opinion of that officer it is necessary or desirable to do so for fire-fighting purposes. [826]

(6) In this section the expression "senior fire brigade officer present," in relation to any fire, means the senior officer present of the fire brigade maintained in pursuance of this Act in the area in which the fire originates, or, if any arrangements or reinforcement scheme made under this Act provide that any other person shall have charge of the operations for the extinction of the fire, that other person. [827]

(7) This section shall come into operation on the appointed day. [828]

*Changes effected.*—As from the appointed day (see *infra*), this section reproduces the substance of s. 14 of the Fire Brigades Act, 1938 (31 Halsbury's Statutes 595). Modifications include the addition to the purposes of entry of "protecting the premises or place from acts done for fire-fighting purposes"; the increase of the fine for obstruction from £10 to £25; and the additional power of closing streets and regulating traffic given to senior fire brigade officers in the absence of police. The specific reference to water undertakers is also new.

*Application to London.*—S. 14 of the Fire Brigades Act, 1938, *supra*, did not apply to the County of London where the powers of entry, etc., were regulated by the Metropolitan Fire Brigade Act, 1865 (11 Halsbury's Statutes 997), under which there was no power of forcible entry in the absence of an actual fire (s. 12). By the same section persons who interfered with the operations of a fire brigade could be forcibly removed. As from the appointed day, however, both the Fire Brigades Act, 1938, *supra*, and the said s. 12, *supra*, are repealed (s. 39 (4) and Sched. VI, *post*), and the present section applies to the administrative county of London as it applies elsewhere.

*Appointed day.*—This means such day as the Secretary of State may by order appoint (s. 38 (1), *post*). April 1, 1948, has been so appointed for England and Wales (see S.I. 1948 No. 325).

**31. False alarms of fire.**—(1) Any person who knowingly gives or causes to be given a false alarm of fire to any fire brigade maintained in pursuance of this Act or to any member of such a brigade shall be liable on summary conviction to a fine not exceeding twenty-five pounds or to imprisonment for a term not exceeding three months or both such fine and such imprisonment. [829]

(2) In relation to anything done before the appointed day references in the last foregoing subsection to a fire brigade maintained in pursuance of this Act shall be construed as references to the National Fire Service. [830]

(3) The False Alarms of Fire Act, 1895, and section sixty-one of the London County Council (General Powers) Act, 1909, shall cease to have effect as from the appointed day, and Regulation one of the Defence (General) Regulations, 1939 (which, so far as still in force, relates to false alarms of fire) is hereby revoked. [831]

*Changes effected.*—The maximum sanction under the False Alarms of Fire Act, 1895 (13 Halsbury's Statutes 870), was a penalty not exceeding £20; that under s. 61 of the London County Council (General Powers) Act, 1909 (11 Halsbury's Statutes 1311), a penalty not exceeding £25, and under regulation 1 of the Defence (General) Regulations, 1939 (S. R. & O., 1939, No. 927, as amended), the general penalties applicable to breaches of the Defence Regulations, namely, on summary conviction, imprisonment for not more than three months or a fine not exceeding £100 or both, and on indictment, not more than two years' imprisonment or a fine not exceeding £500 or both (regulation 92).

Note that the first and second are also formally repealed as from the appointed day by s. 39 (4) and Sched. VI, *post*.

**32. Members of police force not to be employed in fire brigade.**—No member of a police force shall be employed as a member of a fire brigade maintained in pursuance of this Act. [832]

*Police firemen.*—The proviso to s. 1 (7) of the Fire Brigades Act, 1938 (31 Halsbury's Statutes 588), forbade, as from July 29, 1943, the employment of police as part-time members of fire brigades but left intact the power to employ police as whole-time firemen. The present section completes the strong move away from the system of police firemen.

**33. Inquiries.**—(1) The Secretary of State may hold a public local inquiry into the manner in which any fire authority are performing their functions under this Act, or into the circumstances of, or the steps taken to deal with, any particular outbreak of fire. [833]

(2) Subsections (2), (3) and (5) of section two hundred and ninety of the Local Government Act, 1933 (which relate to evidence at local enquiries and to the making of orders as to payment of the costs incurred thereat by local authorities) shall apply to any inquiry held in pursuance of this Act. [834]

*Local Government Act, 1933, s. 290 (2), (3) and (5).*—26 Halsbury's Statutes 459. These subsections provide that the person appointed to hold an inquiry may by summons require attendance to give evidence or to produce relevant documents, and may take evidence on oath or by declaration duly subscribed, provided that no person shall be required to go more than ten miles from his place of residence without payment of expenses or to produce the title to any land not being the property of a local authority. Refusal to comply, etc., are punishable on summary conviction by a fine not exceeding £50 or imprisonment not exceeding six months or both. The Secretary of State may make orders as to payment of costs.

In connection with offences, note that an accused has the right under s. 17 of the Summary Jurisdiction Act, 1879 (11 Halsbury's Statutes 329), to be tried by jury if he so wishes; he must therefore be informed of his right as required by sub-s. (2) of that section.

**34. Expenses and receipts of Secretary of State.**—(1) All expenses incurred by the Secretary of State by virtue of this Act shall be defrayed out of moneys provided by Parliament. [835]

(2) Any receipts of the Secretary of State under this Act shall be paid into the Exchequer. [836]

**35. Regulations and orders to be laid before Parliament.**—(1) Any regulations of the Secretary of State under this Act, and any order of the Secretary of State under section eleven or twenty-six thereof, shall be laid before Parliament forthwith after being made. [837]

(2) If either House of Parliament, within a period of forty days beginning with the day on which any such regulations or order as aforesaid are laid before it, resolves that an Address be presented to His Majesty praying that the regulations or order be annulled, no further proceedings shall be taken thereunder after the date of the resolution, and His Majesty may by Order in Council revoke the regulations or order, so, however, that any such resolution and revocation shall be without prejudice to the validity of anything previously done under the regulations or order or to the making of new regulations or a new order. [838]

(3) In reckoning any such period of forty days as aforesaid, no account shall be taken of any time during which Parliament is dissolved or prorogued, or during which both Houses are adjourned for more than four days. [839]

*Effect of the Statutory Instruments Act, 1946.*—Under this Act, which came into full operation on January 1, 1948 (see S.I. 1948 No. 3), documents made after its commencement in exercise of certain statutory powers conferred by Acts passed before its commencement



will be "statutory instruments" (s. 1 (2); 39 Halsbury's Statutes 784); accordingly such documents are to be laid before Parliament in accordance with s. 4 of that Act in substitution for the corresponding provisions of the present section, and the provisions of s. 5 of that Act for annulment in pursuance of a resolution of either House of Parliament are substituted for the corresponding provisions of the present section. As to what documents are "statutory instruments," see note to s. 3 of the Probation Officers (Superannuation) Act, 1947, title SUPERANNUATION, *post*.

### 36. Application to Scotland. [840]

**37. Application to Isles of Scilly.**—This Act shall apply to the Isles of Scilly as if they were an administrative county and as if the Council of those Isles were the council of the county. [841]

**38. Interpretation.**—(1) In this Act, except where the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:—

- "appointed day" means such day as the Secretary of State may by order appoint;
- "chief officer of police", "police area", "police authority" and "police force" have the same meanings respectively as in the Police Pensions Act, 1921;
- "equipment" includes fire engines and other vehicles and appliances and other apparatus, and also uniforms and badges of rank;
- "fire authority" means an authority which for the time being is constituted a fire authority by this Act or any combination scheme made thereunder;
- "fire-fighting purposes" means the purposes of the extinction of fires and the protection of life and property in case of fire;
- "street" includes any highway, including a highway over any bridge and any road, lane, footway, square, court, alley or passage whether a thoroughfare or not. [842]

(2) References in this Act to any enactment shall be construed as references to that enactment as amended by or under any other enactment. [843]

(3) References in this Act to a fire authority under the Fire Brigades Act, 1938, and to a fire brigade maintained in pursuance of that Act respectively include references to the London County Council and the London Fire Brigade. [844]

*Appointed day.*—April 1, 1948, for England and Wales (S.I. 1948 No. 325).

*Police Pensions Act, 1921.*—12 Halsbury's Statutes 873.

*Fire Brigades Act, 1938.*—31 Halsbury's Statutes 585. The reason for the inclusion of sub-s. (3), *supra*, is that only certain sections of the Act of 1938 applied to the County of London.

### 39. Short title, extent, transitional provisions, repeals and savings.—

(1) This Act may be cited as the Fire Services Act, 1947. [845]

(2) This Act shall not extend to Northern Ireland. [846]

(3) The transitional provisions specified in the Fifth Schedule to this Act shall have effect in relation to the matters specified in that Schedule. [847]

(4) As from the appointed day the enactments specified in the Sixth Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule. [848]

(5) Without prejudice to the provisions of section thirty-eight of the Interpretation Act, 1889 (which relates to the effect of repeals), save as provided in the Fifth Schedule to this Act, nothing in this Act shall affect—

- (a) the operation of any pension scheme in relation to persons retiring before the appointed day from employment as members of fire brigades or the National Fire Service, or dying before that date while in such employment; or



- (b) the operation of any pension scheme the Police and Firemen (War Service) Act, 1939, or any scheme under section seven of that Act in relation to a person to whom section one of that Act or any scheme under the said section seven applies, unless and until the said person becomes a member of a fire brigade maintained in pursuance of this Act or becomes engaged in such other employment in connection with the provision of fire services as may for the purposes of this paragraph be specified in the Firemen's Pension Scheme.

In this subsection the expression "pension scheme" means the Fire Brigade Pensions Act, 1925, or any other scheme for the grant of pensions, allowances or gratuities on the retirement or death of persons employed as members of fire brigades. [849]

*Appointed day.*—For England and Wales, April 1, 1948 (S.I. 1948 No. 325).

*Interpretation Act, 1889, s. 38.*—18 Halsbury's Statutes 1005.

*Police and Firemen (War Service) Act, 1939.*—For ss. 1 and 7 thereof, see 32 Halsbury's Statutes 1150 and 1156.

*Fire Brigade Pensions Act, 1925.*—13 Halsbury's Statutes 1095.

## SCHEDULES

### Section 8

### FIRST SCHEDULE

#### MAKING, APPROVAL AND VARIATION OF ESTABLISHMENT SCHEMES AND MANAGEMENT SCHEMES FOR COUNTIES

1.—(1) A fire authority proposing to make an establishment scheme to which this Schedule applies or a management scheme shall, before making the scheme send to the council of every county district comprised in the area of the authority a copy of a draft of the proposed scheme and shall take into consideration any representations made by the council of any such county district before the expiration of one month from the sending of the copy to that council.

(2) A scheme made in accordance with the last foregoing sub-paragraph may be made either in terms of the draft therein referred to or with such modifications as appear to the fire authority expedient having regard to any representations duly made, and on the submission of any such scheme to the Secretary of State for his approval the fire authority shall forward with the scheme any such representations as aforesaid.

2. Before approving any scheme submitted in accordance with the last foregoing paragraph the Secretary of State shall consider any representations of the council of a county district which have been forwarded to him with the scheme, and any observations he has received from that council or from the fire authority relating thereto.

3. In relation to a fire authority (other than the London County Council) which is the council of a county, subsection (5) of section nineteen of this Act shall have effect—

- (a) as if in paragraph (b) thereof after the words "the Secretary of State" there were inserted the words "whether on the representations of the council of any county district comprised in the area of the fire authority or otherwise";
- (b) as if after the words "after affording to the fire authority" there were inserted the words "and to the council of any such county district as aforesaid." [850]

*Effect of Schedule.*—See note to s. 19 (7), *ante*. As to establishment schemes, see s. 19, *ante*, and as to management schemes, see s. 20, *ante*.

### Section 19

### SECOND SCHEDULE

#### APPLICATION TO COMBINED FIRE AUTHORITIES OF PROVISIONS AS TO ESTABLISHMENT SCHEMES AND MANAGEMENT SCHEMES

1.—(1) In the case of a fire authority constituted by a combination scheme, provision for the matters to which establishment schemes relate (hereafter in this

Schedule referred to as "establishment matters") or to which management schemes relate (hereafter in this Schedule referred to as "management matters") shall be made by the combination scheme and not by an establishment scheme or management scheme, as the case may be, and may be varied or revoked accordingly :

Provided that in the case of an authority constituted by a combination scheme so as to become a fire authority on the appointed day, provision for management matters may be made either in the scheme constituting the authority or by the variation of that scheme as soon as may be after the appointed day.

(2) In this Schedule references to a fire authority constituted by a combination scheme shall be construed, in relation to management matters, as references to such an authority the area of which consists of or includes one or more counties other than the County of London.

(3) Without prejudice to any power to vary a combination scheme, subsection (5) of section nineteen and subsections (3) and (7) of section twenty of this Act shall not apply in relation to a fire authority constituted by a combination scheme.

2. Where by reason of the variation or revocation of a combination scheme the council of a county or county borough becomes a fire authority, the establishment scheme for the authority, and in the case of an authority being the council of a county the management scheme for the authority, shall be contained in the varying or revoking scheme instead of being made in accordance with the provisions of this Act in that behalf, but may be varied or revoked as if so made.

3.—(1) Where a combination scheme, or a scheme varying or revoking a combination scheme, makes provision for establishment or management matters relating to one or more counties, the following provisions shall have effect.

(2) Before the scheme is made a copy of a draft of so much thereof as makes provision for establishment or management matters shall be sent by the authority making the scheme to the council of every county district comprised in the said county or counties, and the said authority shall take into consideration any representations made by the council of any such county district before the expiration of one month from the sending of the copy to that council.

(3) So much of the scheme as aforesaid may be made either in terms of the draft referred to in the last foregoing sub-paragraph or with such modifications as appear expedient to the authority making the scheme, having regard to any representations duly made.

(4) Where the scheme is required to be submitted to the Secretary of State for his approval, there shall be forwarded with the scheme any such representations as aforesaid.

(5) Before approving or making a scheme the Secretary of State shall consider any representations of the council of a county district made or forwarded to him in accordance with the foregoing provisions of this Schedule and, in the case of a scheme not made by him, any observations relating thereto which he has received from the authority making the scheme or the council making the representations.

4. The Secretary of State may, for the purpose of his function under this Schedule as to establishment matters, hold such public local inquiries as he thinks fit. [851]

*Effect of Schedule.*—See note to s. 19 (9), *ante*. As to combined fire authorities and combination schemes, see ss. 5, 6, 8, 9 and 10, *ante*. As to establishment schemes, see s. 19, *ante*, and as to management schemes, see s. 20, *ante*. The appointed day for England and Wales is April 1, 1948 (see S.I. 1948 No. 325).

## Section 26

## THIRD SCHEDULE

### PROVISIONS OF 15 & 16 GEO. 5, C. 47 APPLICABLE FOR PURPOSES OF FIREMEN'S PENSION SCHEME

<i>Provision applicable</i>	<i>Subject of provision</i>
In section ten, sub-section (6).	Granting of certain pensions for periods, and renewal or re-assessment according to degree of disablement.
Section eleven . . . . .	Reduction of pension in respect of incapacity attributable to default of beneficiary.

<i>Provision applicable</i>	<i>Subject of provision</i>
Section twelve ..	Avoidance of assignments and charges ; application of awards where beneficiary or his dependant is in receipt of relief, or for benefit of his dependant ; set-off against awards of sums due to authority ; application of awards where beneficiary under incapacity ; payment of small awards without necessity for probate ; payment of awards in advance ; payment or application of awards to minors ; receipt of person to whom award paid to be good discharge.
Section thirteen ..	Forfeiture and withdrawal of awards.
Section sixteen ..	Suspension of award where beneficiary takes service under local authority. [852]

15 & 16 *Geo. 5, c. 47*.—The Fire Brigade Pensions Act, 1925. For ss. 10 (6), 11, 12, 13 and 16, see 13 *Halsbury's Statutes* 1100, 1101, 1102 and 1103.

As to the application of this Schedule, see s. 26 (2) (j), *ante*.

## Section 36

## FOURTH SCHEDULE

## COMBINED AREAS IN SCOTLAND

[853]

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## Section 39

## FIFTH SCHEDULE

## TRANSITIONAL PROVISIONS

*Provisions relating to period between passing of Act and appointed day*

1. For the purposes of the Fire Services (Emergency Provisions) Act, 1941, the expression "the period of the present emergency" (being the expression which designates the period for which under that Act the National Fire Service is established) shall mean the period beginning as provided in that Act and ending immediately before the appointed day.

2. Subsection (2) of section four of the Emergency Laws (Transitional Provisions) Act, 1946 (which continues the Personal Injuries (Emergency Provisions) Act, 1939, in operation as respects war service injuries, as defined in that Act, sustained by members of the National Fire Service during the period during which the said section four is in force) shall have effect as if the said section four continued in force until the beginning of the appointed day.

*General provisions arising out of transfer of functions to fire authorities*

3.—(1) The Secretary of State may by regulations make such transitional provisions as appear to him expedient in consequence of the transfer to fire authorities of functions relating to fire services of the Secretary of State and of authorities which were fire authorities for the purposes of the Fire Brigades Act, 1938.

(2) Nothing in the following provisions of this Schedule shall be construed as limiting the generality of the provisions of the last foregoing sub-paragraph.

(3) In the following provisions of this Schedule the expression "regulations" means regulations made by the Secretary of State.

*Transfer of persons employed in connection with National Fire Service*

4. Regulations may provide for the transfer on the prescribed terms, to the prescribed fire brigade maintained in pursuance of this Act or to such other service under such fire authority as may be prescribed, of persons who immediately before the appointed day were serving in the National Fire Service.

5.—(1) Regulations may provide for the retention in the service of the Crown, on the prescribed terms, of persons to whom this paragraph applies who immediately before the appointed day were employed (whether as members of the National Fire Service or otherwise) for the purposes of the Fire Services (Emergency Provisions) Act, 1941.

(2) The persons to whom this paragraph applies are persons in whose case the

Secretary of State with the approval of the Treasury determines that it is expedient that they should be retained as aforesaid for the purpose of enabling him to perform his functions under this Act or for administrative purposes pending the bringing into operation by fire authorities of arrangements for the performance of their functions under this Act.

6. Regulations may provide for the employment in the service of the Crown, on such terms and for such period as may be prescribed, of persons transferred to a fire brigade under paragraph 4 of this Schedule where the Secretary of State determines with the approval of the Treasury that it is expedient so to do for the purpose of enabling him to perform his functions under this Act and the fire authority and person concerned consent to that person's being employed as aforesaid.

#### *Transfer of property, rights and liabilities*

7. Regulations may provide for the transfer to fire authorities of property, rights and liabilities vested, enjoyed or incurred on behalf of His Majesty for the purposes of the National Fire Service, and for the carrying on by fire authorities of arrangements (including arrangements for the making of payments) entered into on behalf of the Crown for those purposes.

8.—(1) Regulations may provide for the vesting in fire authorities of property used on behalf of His Majesty for the purposes of the National Fire Service but vested in an authority being a fire authority for the purposes of the Fire Brigades Act, 1938, or for the use of such property by a fire authority on such terms (including terms as to payments) as may be agreed between the authorities or in default of agreement as may be determined by the Secretary of State.

(2) Where property is to be vested under the last foregoing sub-paragraph and it is agreed or determined as aforesaid that the property cannot conveniently be severed from other property, whether or not forming part of the same building, the other property shall also be vested in the fire authority, subject to such rights of the authority for the purposes of the said Act of 1938 to use the other property, on such terms (including terms as to payments), as may be agreed or determined as aforesaid.

9.—(1) Subject to the provisions of the next following sub-paragraph, regulations may provide that where an authority for the purposes of the said Act of 1938 which does not on the appointed day become a fire authority is on or after the appointed day liable to make payments in respect of interest and redemption charges on moneys borrowed for fire-fighting purposes, the fire authority for the area including the area of the first-mentioned authority shall reimburse to that authority the amount of the payments.

(2) Regulations having effect by virtue of the last foregoing sub-paragraph shall not apply in relation to moneys borrowed by the authority for the purposes of the said Act of 1938 in connection with property retained by that authority, but may be made to apply in relation to moneys borrowed in connection with property vested under sub-paragraph (2) of the last foregoing paragraph notwithstanding that the money was not borrowed for fire-fighting purposes.

(3) Any question arising under this paragraph or regulations made thereunder shall be determined by the Minister of Health.

#### *Provisions as to pensions*

10.—(1) The liabilities of any authority for pensions, allowances and gratuities in respect of members of a transferred fire brigade retiring or dying at any time before the appointed day, and the functions of that authority in relation thereto, shall on the appointed day be transferred to the fire authority.

(2) In the last foregoing sub-paragraph the expression "transferred fire brigade" means a fire brigade maintained in pursuance of the Fire Brigades Act, 1938, by an authority which does not on the appointed day become a fire authority, and the expression "the fire authority" in relation to any such brigade means the fire authority for the area including the area for which the brigade was maintained.

11.—(1) Regulations may provide for payments by a former pension authority, in respect of pension liabilities of a fire authority accrued at the appointed day, of such amounts at such times as may be prescribed, and if the regulations so provide out of such funds as may be prescribed.

(2) Regulations made under this paragraph may provide for the determination by the Secretary of State of questions arising under the regulations.

(3) In this paragraph the following expressions have the meaning hereby assigned to them respectively, that is to say :—

“ Pension liabilities of a fire authority accrued at the appointed day ” means, in relation to any fire authority,—

(a) any liabilities for pensions, allowances and gratuities in respect of members of a fire brigade retiring or dying at any time before the appointed day, being liabilities which either were liabilities of the authority immediately before the appointed day or were transferred under the last foregoing paragraph, and

(b) any liabilities of the authority under the Firemen's Pension Scheme in respect of employment or service before the appointed day which under that scheme is treated as employment in the fire brigade maintained by the authority ;

“ former pension authority ” means—

(a) in relation to liabilities specified in paragraph (a) of the last foregoing definition, the authority which immediately before the appointed day was liable to meet them ;

(b) in relation to liabilities specified in paragraph (b) of the last foregoing definition, the authority liable immediately before the appointed day for meeting liabilities, whether vested or contingent, for pensions, allowances or gratuities in respect of such employment or service as is specified in the said paragraph (b).

12.—(1) The liabilities of fire authorities for such pensions, allowances and gratuities as are specified in sub-paragraph (1) of paragraph 10 of this Schedule shall, if regulations so provide, be defrayed out of funds established for defraying liabilities under the Firemen's Pension Scheme.

(2) Payments under sub-paragraph (1) of the last foregoing paragraph shall, if regulations so provide, be carried into funds established as aforesaid.

13. Where by virtue of this Act or a combination scheme an authority which maintained a fire brigade in pursuance of the Fire Brigades Act, 1938, ceases to maintain a fire brigade, the Police and Firemen (War Service) Acts, 1939 and 1944, shall, in the case of former members of the brigade to whom section one of the Police and Firemen (War Service) Act, 1939, applies, have effect with such modification of references to the fire brigades to which they belonged, and to the authority maintaining that brigade, as may be prescribed.

#### *Compensation for loss of emoluments or employment*

14.—(1) Regulations made with the approval of the Treasury may provide for authorising or requiring the appropriate authority to pay compensation in respect of loss of emoluments or pension—

- (a) to members of police forces and persons employed by local authorities, not being in either case persons who were transferred to the National Fire Service, as to whom the Secretary of State is satisfied that by reason of the National Fire Service (General) Regulation, 1941, they suffered a loss of emoluments ;
- (b) to persons who, having been members of the National Fire Service immediately before the appointed day, become on that day members of a fire brigade maintained in pursuance of this Act and suffer a reduction of emoluments in comparison with the emoluments determined by the regulations to be appropriate to their former employment in connection with the provision of fire services ;
- (c) to persons who immediately before the eighteenth day of August, nineteen hundred and forty-one, were employed by a local authority, or were engaged in war service within the meaning of the Local Government Staffs (War Service) Act, 1939, having left employment with the local authority to undertake such service, and immediately before the appointed day were employed for the purposes of the Fire Services (Emergency Provisions) Act, 1941, otherwise than as members of the National Fire Service, and who either—

(a) become employed on the appointed day by a local authority and suffer a reduction in emoluments in comparison with the emoluments determined by the regulations to be appropriate as aforesaid, or

(b) do not on the appointed day become employed by a local authority.

(2) Regulations may authorise or require the payment by the appropriate authority of emoluments, and of pensions, gratuities or allowances, of such amounts and subject to such conditions as may be prescribed in the case of persons who, having at any time before the appointed day been chief officers of fire brigades maintained in pursuance of the Fire Brigades Act, 1938, do not on or after the appointed day become chief officers of fire brigades maintained in pursuance of this Act.

(3) In this paragraph the expression "appropriate authority", in relation to the whole or any part of any payment, means a fire authority or the Secretary of State, as may be prescribed.

(4) Regulations under this paragraph may make provision as to the determination of questions arising under the regulations.

*Special provisions as to police-firemen*

15.—(1) The provisions of the Police Act, 1946, as to the transfer of property, rights and liabilities from the council of an area ceasing to be a separate police area to the council of a county or to a combined police authority shall apply, and be deemed always to have applied, to property, rights and liabilities of the first-mentioned council held or incurred in connection with pensions, allowances or gratuities—

(a) in respect of whole-time service for fire-fighting purposes in the police force of the said area, and

(b) in respect of service for such purposes (whether before or after the said area ceased to be a separate police area) falling by virtue of regulations made under the Fire Services (Emergency Provisions) Act, 1941, to be treated for the purposes of the Police Pensions Act, 1921, as service in the said police force.

(2) The said provisions of the Police Act, 1946, shall not apply, and shall be deemed never to have applied, to any other property, rights or liabilities held or incurred in connection with the provision of fire services.

(3) Without prejudice to the generality of sub-paragraph (1) of this paragraph, the provisions of sub-paragraph (1) of paragraph 3 of the Third Schedule to the said Act of 1946 as to the treatment of pensions, allowances and gratuities granted before the date of transfer in respect of members of a transferred force shall apply, and be deemed always to have applied, to pensions, allowances and gratuities granted before that date to members of the National Fire Service whose service therein fell by virtue of regulations made under the said Act of 1941 to be treated as service in the transferred force.

16.—(1) Where section one of the Police and Firemen (War Service) Act, 1939, applied to a constable by reason of his having ceased to serve as a member of a fire brigade maintained in pursuance of the Fire Brigades Act, 1938—

(a) engagement in service on the National Fire Service, whether before or after the passing of this Act, shall be treated for the purposes of the Police and Firemen (War Service) Acts, 1939 and 1944, as resumption of service as a constable ;

(b) if he is, or was before the passing of this Act, prevented as mentioned in those Acts from engaging in service in the National Fire Service or a fire brigade maintained in pursuance of this Act, he shall be treated for the purposes of those Acts as having been so prevented from resuming service as a constable.

(2) Nothing in the last foregoing sub-paragraph shall be construed as prejudicing the power of the Secretary of State under subsection (3) of section six of the Police and Firemen (War Service) Act, 1944, to declare what during the existence of the National Fire Service is to be treated for the purposes of the said Acts of 1939 and 1944 as resuming service as a fireman.



*Miscellaneous provisions*

17.—(1) Regulations may provide for authorising the taking before the appointed day by councils of counties and county boroughs and other authorities which on the appointed day will become fire authorities of such steps as appear to the Secretary of State to be requisite for the purpose of enabling fire authorities to perform their functions under this Act on or after that day.

(2) Without prejudice to the provisions of the last foregoing paragraph, a combination scheme may be made before the appointed day, but so as to come into operation on or after that day, or, if the scheme is made by virtue of section ten of this Act, on or after the appointed day or the date mentioned in that section, whichever is the later.

(3) In relation to a combination scheme made by virtue of the last foregoing sub-paragraph, references in sections five, six, nine and ten of this Act to fire authorities (other than references to the fire authority constituted by the scheme) shall be construed as references to authorities which apart from the scheme would on the appointed day become fire authorities.

(4) Notwithstanding anything in the provisions of the last foregoing sub-paragraph or in section ten of this Act, a combination scheme made by virtue thereof may come into operation earlier than would be permissible under those provisions, in so far as is requisite for the purposes of sub-paragraph (1) of this paragraph.

18. The provisions of Part VIII of the Requisitioned Land and War Works Act, 1945 (which provides for adjustments of compensation on the acquisition of land in certain cases for the purpose of eliminating changes in value due to the exercise of emergency powers) shall have effect in relation to any purchase of land by a fire authority under subsection (5) of section three of this Act as if the expression "war period" in the said Act of 1945 included any period during which the Supplies and Services (Transitional Powers) Act, 1945, is in force.

*Provisions as to regulations*

19.—(1) Regulations shall be made after consultation with such associations representing local authorities as appear to the Secretary of State to be concerned.

(2) In this Schedule the expression "prescribed" means prescribed by or under regulations.

(3) Regulations may be made either generally or so as to apply in such circumstances as may be prescribed, and may make different provisions for different cases. [854]

*Fire Services (Emergency Provisions) Act, 1941.*—34 Halsbury's Statutes 223. S. 1 of this Act empowered the Secretary of State to make "regulations providing for the co-ordination, for the period of the present emergency, of all or any of the fire services provided by local authorities or for the unification, in whole or in part, of all or any of those services for that period. . . ." The powers conferred on the Secretary of State by this Act were later extended and modified by the Defence (National Fire Service) Regulations, 1941 (S. R. & O., 1941, No. 1133). By regulation 3 (1) of the National Fire Service (General) Regulations, 1941 (S. R. & O., 1941, No. 1134; 34 Halsbury's Statutes 228), made under the Act of 1941 (as amended), it was provided as follows:—

"During the period of the present emergency, there shall be a National Fire Service in Great Britain, to be set up and maintained on behalf of the Crown by the Secretary of State, for the extinction of fires, and the protection of life and property in case of fire, in Great Britain."

This provision was replaced as from September 26, 1944, with minor modifications, by regulation 3 (1) of the National Fire Service (General) Regulations, 1944 (S. R. & O., 1944, No. 1077).

Paragraph 1 of this Schedule, in defining the period of the present emergency for the purposes of the Act of 1941, brings to an end the National Fire Service as from the beginning of the appointed day (see *infra*).

*National Fire Service.*—The National Fire Service was a national force under the supreme control of the Secretary of State, who delegated powers to Regional Commissioners who were assisted by Chief Regional Fire Officers, subject to whom were Fire Force Commanders and various other ranks down to that of fireman. As at August 18, 1941, all fire personnel of local authorities were transferred to the National Fire Service (General) Regulations, 1941, regulation 12 (34 Halsbury's Statutes 232), as applied by S. R. & O., 1941, No. 1381).

*Appointed day.*—By s. 38 (1), *ante*, this means such day as the Secretary of State may appoint. For England and Wales, April 1, 1948, has been so appointed (see S.I. 1948 No. 325).

*War service injuries sustained by members of the National Fire Service.*—S. 1 of the Personal Injuries (Emergency Provisions) Act, 1939 (32 Halsbury's Statutes 1061), provided for the



making of payments in respect of "war service injuries," as defined in s. 8 (1) thereof, sustained "during the period of the present emergency" by civil defence volunteers, that is to say, persons certified by responsible officers of civil defence organisations to have been members of those organisations at the time when the injuries were sustained (s. 8 (1)). The National Fire Service was declared to be a civil defence organisation for the purposes of the Personal Injuries (Emergency Provisions) Act, 1939, by regulation 9 of the National Fire Service (General) Regulations, 1941 (S. R. & O., 1941, No. 1134; 34 Halsbury's Statutes 231).

The Personal Injuries (Emergency Provisions) Act (End of Emergency) Order, 1946 (S. R. & O., 1946, No. 379) declared March 19, 1946, to be the date on which the emergency that was the occasion of the passing of the Act of 1939 came to an end, but s. 4 of the Emergency Laws (Transitional Provisions) Act, 1946 (39 Halsbury's Statutes 883), extended this period as respects war service injuries sustained by members of the National Fire Service until December 31, 1947 (subject to an important proviso) and paragraph 2 of the present Schedule has the effect of substituting for December 31, 1947, the appointed day under the present Act, *i.e.* for England and Wales April 1, 1948.

*Regulations.*—On December 23, 1947, the Secretary of State, under paragraphs 3 and 17 of the present Schedule, made the Fire Services (Authorisation) Regulations, 1947 (S. R. & O., 1947, No. 2781).

Note that regulations under paragraph 14 (1), *ante*, require Treasury consent. Note also paragraph 19 which provides, *inter alia*, that regulations are to be made after consultation with such associations representing local authorities as appear to the Secretary of State to be concerned.

*Transfer of fire authorities.*—"Functions relating to fire services of the Secretary of State" refers to the National Fire Service, and "authorities which were fire authorities for the purposes of the Fire Brigades Act, 1938," refers to the bodies which were fire authorities before August 18, 1941, the date of transfer to the National Fire Service, namely, county boroughs and county district councils (*i.e.* the councils of non-county boroughs, urban and rural districts) (see s. 1 of the Fire Brigades Act, 1938; 31 Halsbury's Statutes 586). Under s. 4 of the present Act, *ante*, the only local authorities to be fire authorities are county boroughs and county councils.

*Fire Brigades Act, 1938.*—31 Halsbury's Statutes 585.

*Paragraph 9.*—Note that it is the Ministry of Health, which as a "neutral" department is empowered to determine questions arising out of the present paragraph.

*Liability for pensions, etc.*—See note to s. 27, *ante*.

*Police and Firemen (War Service) Act, 1939, s. 1.*—32 Halsbury's Statutes 1150. This Act, like the Local Government Staffs (War Service) Act, 1939 (32 Halsbury's Statutes 1118), and the Teachers Superannuation (War Service) Act, 1939 (32 Halsbury's Statutes 1131), in their respective spheres, made provision for the make-up of war service pay and the protection of superannuation rights of police and firemen who undertook war service during the period of the emergency. For the Police and Firemen (War Service) Act, 1944, see 37 Halsbury's Statutes 400.

*Paragraph 14 (1) (a).*—By regulation 11 of the National Fire Service (General) Regulations, 1941 (S. R. & O., 1941, No. 1134), all persons who, on August 18, 1941, were fire personnel employed by or serving under the directions of a local authority were transferred to the National Fire Service, but it was expressly provided that no person should be transferred (1) who was a member of a police force within the meaning of the Police Pensions Act, 1921 (12 Halsbury's Statutes 873), unless he were a member of a fire brigade employed whole-time on fire brigade duties, or (2) whom the appropriate Regional Commissioner and local authority were agreed had since September 3, 1939, been employed mainly on duties other than fire brigade duties.

The word "Regulation" for "Regulations" in this paragraph is a misprint in the King's Printer's Copy.

*Paragraph 14 (1) (b).*—Compare regulation 19 of the National Fire Service (General) Regulations, 1941 (S. R. & O., 1941, No. 1134) (34 Halsbury's Statutes 235).

*Paragraph 14 (1) (c).*—This refers to employees or ex-employees of a local authority, who, though not themselves members of the National Fire Service, were employed for fire brigade purposes, as, for instance, on clerical duties or duties in connection with the construction, repair or maintenance of fire engines or of vehicles, appliances or equipment used for fire brigade purposes. For a full explanation of the operation of this provision, see 438 H. of C. Official Report 1388-1389.

*Former chief officers of fire brigades (paragraph 14 (2)).*—There have been no chief officers of brigades since August 18, 1941, when the transfer to the National Fire Service took effect. Before that date there were approximately 1,668 local fire brigades in Great Britain with a similar number of chief officers; after the appointed day the number of local fire authorities will have been reduced to some 140. These factors account for the absence of any provisions analogous to s. 11 of the Police Act, 1946 (39 Halsbury's Statutes 626), relating to chief constables.

*Paragraph 15.*—Speaking for the Government, Lord Walkden explained the purpose of this paragraph at the Committee Stage in the House of Lords on July 10, 1947, as follows:—

"The subject dealt with here . . . has relation to the position of ex-police constables who serve as firemen. . . . The Amendment relates to a number of firemen—about 1,000 in all, I understand—who until the formation of the National Fire Service were police firemen. . . . He [the police fireman] was a member of a police force . . . and he held his superannuation rights under the Police Pensions Acts. When the National Fire Service was formed, whole-time police firemen were transferred to the Service and ceased to be constables. For pension purposes service in the National Fire Service was deemed to be service in the police force from which they were transferred. The Police Act, 1946, required the

police forces of non-county boroughs to be amalgamated with the county police forces, and among the forces which thus ceased to have a separate existence were a number of forces which had included police firemen. The Police Act makes provision in such cases for the pension liability of the defunct police authority to be transferred to the new authority—that is, the county. As, however, the police firemen were no longer members of the defunct force at the time of its amalgamation (although they were deemed to be serving in that force for pension purposes), some doubt has arisen as to their present position, and the object of this Amendment is to make it clear that the pension functions of the defunct police authority were in fact transferred at the appointed day of the Police Act—April 1, 1947. Other property and liabilities held or incurred in connection with the provisions of fire services by the defunct police authorities have not been transferred to the county, although they will, of course, be so transferred on the appointed day of this Bill" (150 H. of L. Official Report 478-474).

*Police Act, 1946.*—39 Halsbury's Statutes 616. For the transfer of property, rights and liabilities referred to in paragraph 15, *ante*, see ss. 1, 9 and Sched. III thereof (39 Halsbury's Statutes 618, 634 and 636).

*Whole-time fire service in a police force.*—See s. 32, *ante*, and note thereto.

*Regulations under the Fire Services (Emergency Provisions) Act, 1941* (see paragraph 15 (1) (b)).—As to service to be treated as police service, see regulation 4 of the National Fire Service (Preservation of Pensions) (Police Firemen) Regulations, 1941 (S. R. & O., 1941, No. 1271) as amended by the National Fire Service (Preservation of Pensions) (Police Firemen) (No. 2) Regulations, 1945 (S. R. & O., 1945, No. 1659).

*Requisitioned Land and War Works Act, 1945, Part VIII.*—38 Halsbury's Statutes 614 *et seq.* S. 41 of this Act provides that, subject to certain detailed considerations, in assessing compensation on the acquisition of land, such adjustment is to be made therein as is necessary to offset any increase or diminution of the compensation attributable either to damage occurring while the land was, during the war period, in the possession of a Minister or of a person occupying or using it under the authority of a Minister; or any work done since the beginning of the war period by or by arrangement with a Minister or the acquiring authority or in exercise of emergency powers; or any prohibition or restriction, imposed in the exercise of emergency powers, on the doing of any work on the land.

*Supplies and Services (Transitional Powers) Act, 1945.*—38 Halsbury's Statutes 629. S. 8 of this Act provides that it shall continue in force for five years from December 10, 1945, the date of its passing, but provision is made for its continuance in force for a further year at a time if both Houses of Parliament so resolve. For present purposes, therefore, this period is to be included in the expression "war period" as appearing in the Requisitioned Land and War Works Act, 1945, *supra*.

## Section 39

## SIXTH SCHEDULE

## ENACTMENTS REPEALED

Session and Chapter	Short title	Extent of repeal
25 & 26 Vict. c. ccv.	The Salford Improvement Act, 1862.	Section fifty.
28 & 29 Vict. c. 90.	The Metropolitan Fire Brigade Act, 1865.	The whole Act, except sections thirteen to seventeen, section twenty-four, section twenty-nine and section thirty-one.
*	*	*
34 & 35 Vict. c. 113.	The Metropolis Water Act, 1871.	Section thirty-four.
58 & 59 Vict. c. 28.	The False Alarms of Fire Act, 1895.	The whole Act.
*	*	*
9 Edw. 7, c. cxxx.	The London County Council (General Powers) Act, 1909.	Section sixty-one.
11 & 12 Geo. 5, c. lxxiv.	The Liverpool Corporation Act, 1921.	Section five hundred and nine, so far as it relates to owners of property.
15 & 16 Geo. 5, c. 47.	The Fire Brigade Pensions Act, 1925.	The whole Act.
*	*	*

Session and Chapter	Short title	Extent of repeal
19 & 20 Geo. 5, c. 35.	The Fire Brigade Pensions Act, 1929.	The whole Act.
* * *	* * *	* * *
26 Geo. 5 & 1 Edw. 8, c. lx.	The London County Council (General Powers) Act, 1936.	Section forty-nine.
1 Edw. 8 & 1 Geo. 6, c. 68.	The Local Government Superannuation Act, 1937.	In the First Schedule, in Part II, paragraph 2.
* * *	* * *	* * *
1 & 2 Geo. 6, c. 72.	The Fire Brigades Act, 1938.	The whole Act.
* * *	* * *	* * *

[855]

*Metropolitan Fire Brigade Act, 1865.*—For ss. 13-17, 24, 29 and 31, see 11 Halsbury's Statutes 1000-1001, 1002 and 1003.

*Metropolis Water Act, 1871, s. 34.*—20 Halsbury's Statutes 236.

*False Alarms of Fire Act, 1895.*—13 Halsbury's Statutes 870.

*London County Council (General Powers) Act, 1909, s. 61.*—11 Halsbury's Statutes 1311.

*Fire Brigade Pensions Act, 1925.*—13 Halsbury's Statutes 1095.

*Fire Brigade Pensions Act, 1929.*—13 Halsbury's Statutes 1194.

*London County Council (General Powers) Act, 1936, s. 49.*—29 Halsbury's Statutes 287.

*Local Government Superannuation Act, 1937, Sched. I, Part II, paragraph 2.*—30 Halsbury's Statutes 420.

*Fire Brigades Act, 1938.*—31 Halsbury's Statutes 585.

## ORDERS, CIRCULARS AND MEMORANDA

### NATIONAL FIRE SERVICE (GENERAL) REGULATIONS, 1947

*S. R. & O., 1947, No. 5*

*January 1, 1947*

In pursuance of the powers conferred on me by the Fire Services (Emergency Provisions) Act, 1941, as having effect by virtue of the Emergency Laws (Transitional Provisions) Act, 1946, I [*i.e.* the Secretary of State] hereby make the following Regulations:—

1. For sub-paragraphs (3), (4), (5), (6), (7) and (8) of paragraph 1 of the Third Schedule to the National Fire Service (General) Regulations, 1944 (which relate to the pay of whole-time firemen and firewomen), there shall be substituted the following sub-paragraphs:—

“(3) The scale of pay for a whole-time Section Leader shall be as follows:—

	Weekly	
	s.	d.
During the first year of service after promotion .. ..	150	0
During the second year of service after promotion .. ..	153	0
During the third year of service after promotion .. ..	156	0
During the fourth year of service after promotion .. ..	159	0
During the fifth year of service after promotion .. ..	162	0
During the sixth and subsequent years of service after promotion .. ..	165	0

(4) The scale of pay for a whole-time Leading Fireman shall be as follows :—

	Weekly	
	s.	d.
During the first year of service after promotion .. ..	123	0
During the second year of service after promotion .. ..	126	0
During the third year of service after promotion .. ..	129	0
During the fourth year of service after promotion .. ..	132	0
During the fifth year of service after promotion .. ..	135	0
During the sixth and subsequent years of service after promotion .. .. .	138	0

Provided that a man who, immediately before promotion, was entitled to a rate of pay in the scale then applicable to him not less in amount than the lowest rate in the scale in this sub-paragraph shall be entitled, during the first year of service after promotion, to the rate of pay in the latter scale next above the amount of the rate to which he was entitled immediately before promotion and, during each subsequent year of service, to an increment in the latter scale.

(5) The rate of pay for a whole-time Senior Leading Firewoman shall be 110s. 0d. weekly and for a whole-time Leading Firewoman 95s. 0d. weekly.

(6) The scale of pay for a whole-time member of the National Fire Service holding the rank of Fireman who has attained the age of 20 years shall be according to the following scale but in applying that scale any service before attaining that age shall be disregarded :—

	Weekly	
	s.	d.
During the first and second years of service .. ..	105	0
During the third year of service .. .. .	108	0
During the fourth year of service .. .. .	111	0
During the fifth year of service .. .. .	114	0
During the sixth year of service .. .. .	117	0
During the seventh year of service .. .. .	120	0
During the eighth year of service .. .. .	123	0
During the ninth year of service .. .. .	126	0
During the tenth year of service .. .. .	129	0
During the eleventh and subsequent years of service ..	132	0

(7) Subject to the provisions of sub-paragraph (8) hereof, the scale of pay for a whole-time member of the National Fire Service holding the rank of Firewoman shall be as follows :—

	Weekly	
	s.	d.
During the first year of service .. .. .	72	6
During the second year of service .. .. .	75	0
During the third year of service .. .. .	77	6
During the fourth year of service .. .. .	80	0
During the fifth year of service .. .. .	82	6
During the sixth year of service .. .. .	85	0
During the seventh year of service .. .. .	87	6
During the eighth and subsequent years of service ..	90	0

(8) The rates of pay for whole-time members of the National Fire

Service holding the rank of Fireman or Firewoman who have not attained the age of 20 years shall be as set out in the subjoined table :—

<i>Table</i>	<i>Firemen Weekly</i>		<i>Firewomen Weekly</i>	
	<i>s.</i>	<i>d.</i>	<i>s.</i>	<i>d.</i>
Before attaining the age of 17 years ..	45	0	40	0
During the eighteenth year of age ..	50	0	47	6
During the nineteenth year of age ..	60	0	55	0
During the twentieth year of age ..	80	0	61	0 "

[856]

2.—(1) These Regulations may be cited as the National Fire Service (General) Regulations, 1947.

(2) These Regulations shall come into operation on the third day of January, 1947. [857]

\* \* \* \* \*

### NATIONAL FIRE SERVICE (PRESERVATION OF PENSIONS) REGULATIONS, 1947

*S. R. & O., 1947, No. 538*

*March 26, 1947*

In pursuance of the powers conferred on me by the Fire Services (Emergency Provisions) Act, 1941, as having effect by virtue of section four of the Emergency Laws (Transitional Provisions) Act, 1946, I [*i.e.* the Secretary of State] hereby make the following Regulations :—

1. The National Fire Service (Preservation of Pensions) Regulations, 1943, shall have effect as if for the words "one and a half times" in the following paragraphs of the said Regulations, that is to say :—

paragraph (2) of Regulation 3; paragraph (1) of Regulation 4; paragraph (2) of Regulation 11; paragraph (2) of Regulation 12; paragraph (1) of Regulation 13; paragraph (2) of Regulation 16; paragraph (1) of Regulation 22; paragraph (2) of Regulation 25; and paragraphs (a) and (b) of Regulation 26,

there were substituted, in the case of the said paragraph (2) of Regulation 11 of the said Regulations, the words "twice the amount of" and, in the case of the remaining of the foregoing paragraphs of the said Regulations, the word "twice." [858]

2. These Regulations may be cited as the National Fire Service (Preservation of Pensions) Regulations, 1947, and shall come into operation on the first day of April, 1947. [859]

\* \* \* \* \*

### EXPLANATORY NOTE

*(This Note is not part of the Regulations, but is intended to indicate their general purport.)*

*The purpose of this amendment is, in the case of those former professional and police firemen who fall within the National Fire Service (Preservation of Pensions) Regulations, 1943, to increase the amount of National Fire Service pay to be taken into account for pension purposes from the existing maximum of one and a half times the sum estimated as the pay which the fireman would have been receiving had he remained a member of the local brigade to a new maximum of twice this estimated local brigade pay.*

## NATIONAL FIRE SERVICE (GENERAL) (NO. 2) REGULATIONS, 1947

*S. R. & O., 1947, No. 615*

*April 2, 1947*

In pursuance of the powers conferred on me by the Fire Services (Emergency Provisions) Act, 1941, as having effect by virtue of the Emergency Laws (Transitional Provisions) Act, 1946, I [*i.e.* the Secretary of State] hereby make the following Regulations :—

1. For sub-paragraph (4) of paragraph 1 of the Third Schedule to the National Fire Service (General) Regulations, 1944 (which sub-paragraph relates to the pay of a whole-time Leading Fireman), there shall be substituted the following sub-paragraph :—

“(4) The scale of pay for a whole-time Leading Fireman shall be as follows :—

	<i>Weekly</i>
	<i>s.      d.</i>
During the first year of service after promotion .. .. .	127   0
During the second year of service after promotion .. .. .	130   0
During the third year of service after promotion .. .. .	133   0
During the fourth year of service after promotion .. .. .	136   0
During the fifth year of service after promotion .. .. .	139   0
During the sixth year of service after promotion .. .. .	142   0
During the seventh and subsequent years of service after promotion .. .. .	145   0

Provided that a man who, immediately before promotion, was entitled to a rate of pay in the scale then applicable to him not less in amount than the lowest rate in the scale in this sub-paragraph shall be entitled, during the first year of service after promotion, to the rate of pay in the latter scale next above the amount of the rate to which he was entitled immediately before promotion and, during each subsequent year of service, to an increment in the latter scale.” [860]

2.—(1) These Regulations may be cited as the National Fire Service (General) (No. 2) Regulations, 1947.

(2) These Regulations shall come into operation on the fourth day of April, 1947. [861]

\*             \*             \*             \*             \*

## NATIONAL FIRE SERVICE (GENERAL) (NO. 3) REGULATIONS, 1947

*S. R. & O., 1947, No. 823*

*May 1, 1947*

In pursuance of the powers conferred on me by the Fire Services (Emergency Provisions) Act, 1941, as having effect by virtue of the Emergency Laws (Transitional Provisions) Act, 1946, I [*i.e.* the Secretary of State] hereby make the following Regulations :—

1. In sub-paragraph (9) of paragraph 1 of the Third Schedule to the National Fire Service (General) Regulations, 1944, for the words “after the thirty-first day of August, 1939”, in the first place where those words occur, there shall be substituted the words “and also, in the case of service

in the London Fire Brigade or the West Ham Fire Brigade, any period of service (other than service in the London Fire Brigade as a member entitled to benefit from the Superannuation and Provident Fund established by virtue of the London County Council (General Powers) Act, 1891, before the first day of September, 1939". [862]

2. After paragraph 1 of the Third Schedule to the said Regulations there shall be inserted the following paragraph :—

" 1A.—(1) Subject to the provisions of sub-paragraph (5) of this paragraph, a fireman who has performed seventeen years of service may be granted a long service increment of 4s. 0d. a week in his pay if the Fire Force Commander is satisfied that he has shown zeal and proficiency in the performance of his duties and is well conducted.

(2) Subject as aforesaid, a fireman who has performed twenty-two years of service may be granted, in lieu of the long service increment (if any) granted to him under sub-paragraph (1) of this paragraph, a long service increment of 8s. 0d. a week in his pay if the Fire Force Commander is satisfied as aforesaid.

(3) As soon as a fireman has performed seventeen or, as the case may be, twenty-two years of service, the Fire Force Commander shall consider whether a long service increment shall be granted to him under sub-paragraph (1) or, as the case may be, sub-paragraph (2) of this paragraph.

(4) If the Fire Force Commander is of opinion that a fireman in receipt of a long service increment under this paragraph is not showing zeal or proficiency in the performance of his duties or that he is not well conducted, the fireman shall be given a written warning of the opinion of the Fire Force Commander and if, at the end of a period of two months from the date of the warning or of such longer period as may be specified in the warning, the Fire Force Commander is still of the same opinion, the increment shall be withdrawn :

Provided that if, after the last grant of an increment under this paragraph to a fireman—

- (a) the fireman is guilty of an offence against discipline for which he is punished by a stoppage of pay amounting in the aggregate to 20s. 0d., or any greater punishment,
- (b) the fireman is guilty, during any period of twelve months, of two offences against discipline, for which he is punished by any punishment specified in paragraph 4 of Part II of the Second Schedule to these Regulations, or
- (c) the fireman is guilty of more than three offences against discipline for which he is punished by any punishment specified as aforesaid,

the increment may be withdrawn without warning.

(5) No long service increment shall be granted under this paragraph to a fireman from whom a long service increment has been withdrawn under sub-paragraph (4) of this paragraph until a period of a year has elapsed from the date of the withdrawal.

(6) In the case of any fireman who is not a member of a Fire Force, this paragraph shall have effect with the substitution for references to the Fire Force Commander of references to such officer as may be designated by the Secretary of State in relation to any particular case or class of cases.

(7) In this paragraph ' service ' has the same meaning as in paragraph 1 of this Schedule, and ' fireman ' means a member of the National Fire Service holding the rank of fireman." [863]



3. For the proviso to sub-paragraph (3) of paragraph 8 of the Third Schedule to the said Regulations there shall be substituted the following proviso :—

“ Provided that where any fireman is or has since he became a fireman in the National Fire Service been reduced in rank for an offence against discipline or on conviction of a criminal offence and has not since he was so reduced been promoted to the rank from which he was so reduced or to a higher rank, the pay to which he would have been entitled if he had remained a member of his brigade or force shall be deemed to be reduced by an amount equal to the difference at the time of his reduction between the ordinary pay of the rank from which he was reduced and that of the rank to which he was reduced so, however, that—

- (a) during any time when he is serving in a rank higher than that to which he was so reduced, the pay to which he would have been entitled as aforesaid shall not be deemed to be reduced by an amount greater than the difference at the time of his reduction between the ordinary pay of the rank from which he was reduced and that of the rank in which he is serving, and
- (b) the pay to which he would have been entitled as aforesaid shall not be deemed to be less than the pay, if any, to which he would have been entitled had he immediately before his transfer to the National Fire Service been in the rank of fireman or constable in his brigade or force and had he remained a member of his brigade or force :

in this proviso the expression ‘ ordinary pay ’ means, in relation to any rank, the pay (as determined in accordance with paragraph 1 of this Schedule or of the Third Schedule to the National Fire Service (General) Regulations, 1941, as circumstances require) of a member of the National Fire Service to whom this paragraph does not apply holding that rank.”

[864]

4. In the proviso to paragraph 10 of the Third Schedule to the said Regulations after the words “ Provided that ” there shall be inserted the letter “ (a) ” and at the end of the said proviso there shall be added the following proviso :—

- “(b) where the Secretary of State is satisfied that in the case of any such fireman as aforesaid there has at any time been an increase of pay granted wholly or partly in respect of any change in conditions of service affecting hours of duty, being either an increase of pay given to the fireman before he ceased to be a member of his brigade or force or an increase of pay taken into account under proviso (a) to this paragraph, and that the conditions of service of the fireman as regards hours of duty are not more onerous than was the case immediately before the change which was the occasion of the said increase of pay, then the said increase of pay shall, to such extent, if any, as the Secretary of State may direct, be left out of account.”

[865]

5.—(1) These Regulations may be cited as the National Fire Service (General) (No. 3) Regulations, 1947.

(2) These Regulations shall come into operation on the second day of May, 1947. [866]

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## EXPLANATORY NOTE

*(This Note is not part of the Regulations, but is intended to indicate their general purport.)*

*For the purposes of the scale of pay for the rank of fireman in the National Fire Service, certain former whole-time paid service after August 31st, 1939, is counted under the present Regulations. Under the amendment made by Regulation 1 the limitation to service after that date is removed, except in the case of certain service in the London Fire Brigade and service in the West Ham Fire Brigade. Regulation 2 provides for the grant under certain conditions of long service increments after seventeen and twenty-two years. The purpose of the amendment made by Regulation 3 is to secure that a former professional or police fireman transferred to the National Fire Service shall not on reduction in rank for an offence against discipline or on conviction of a criminal offence lose the benefit of certain increments in pay and increases of bonus which he would have had if he had remained a member of his brigade or force and of which account would have been taken if he had not been so reduced in rank. The amendment made by Regulation 4 enables increases of pay granted, in respect of more onerous conditions as to hours of duty which have since ceased to obtain, to a former professional or police fireman transferred to the National Fire Service to be left out of account, to such extent as the Secretary of State may direct, in computing the pay to which he would have been entitled if he had remained a member of his brigade or force.*

## NATIONAL FIRE SERVICE (PRESERVATION OF PENSIONS) (NO. 2) REGULATIONS, 1947

*S. R. & O., 1947, No. 824*

*May 1, 1947*

In pursuance of the powers conferred on me by the Fire Services (Emergency Provisions) Act, 1941, as having effect by virtue of section four of the Emergency Laws (Transitional Provisions) Act, 1946, I [*i.e.* the Secretary of State] hereby make the following Regulations :—

1. The following Regulations, that is to say :—

- (a) Regulation 12 of the National Fire Service (Preservation of Pensions) (Act of 1925) Regulations, 1941,
- (b) Regulation 11 of the London Fire Service (Preservation of Pensions) (London and West Ham) Regulations, 1941,
- (c) Regulation 12 of the National Fire Service (Preservation of Pensions) (Birmingham and Leicester) Regulations, 1941, and
- (d) Regulation 12 of the National Fire Service (Preservation of Pensions) (Bolton and Derby) Regulations, 1941,

shall be amended in each case by the substitution for the words “ the National Fire Service (General) Regulations, 1941 ” of the words “ the National Fire Service (General) Regulations, 1944 ”, and the said Regulations and Regulation 13 of the National Fire Service (Preservation of Pensions) (Police Firemen) Regulations, 1941, shall be amended in each case by the substitution for the proviso of the following proviso :—

“ Provided that—

- (i) any such resulting increase of pay as is mentioned in proviso (a) to that paragraph shall (however treated for the purposes of those Regulations) be taken into account for the purposes of these Regulations to such extent, if any, as the Secretary of State may direct under this paragraph, and

- (ii) any increase of pay which may by virtue of proviso (b) to the said paragraph be left out of account for the purposes of the National Fire Service (General) Regulations, 1944, shall (however treated for the purposes of those Regulations) be left out of account for the purposes of these Regulations to such extent, if any, as the Secretary of State may direct under this paragraph.” [867]

2.—(1) These Regulations may be cited as the National Fire Service (Preservation of Pensions) (No. 2) Regulations, 1947.

(2) These Regulations shall come into operation on the second day of May, 1947. [868]

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### EXPLANATORY NOTE

*(This Note is not part of the Regulations, but is intended to indicate their general purport.)*

*Under these amendments to the various Regulations, increases of pay granted, in respect of more onerous conditions as to hours of duty which have since ceased to obtain, to the different classes of former professional or police firemen to whom those Regulations apply, may be left out of account for pension purposes to such extent as the Secretary of State may direct.*

## NATIONAL FIRE SERVICE (GENERAL) (NO. 4) REGULATIONS, 1947

S. R. & O., 1947, No. 846

May 5, 1947

In pursuance of the powers conferred on me by the Fire Services (Emergency Provisions) Act, 1941, as having effect by virtue of the Emergency Laws (Transitional Provisions) Act, 1946, I [*i.e.* the Secretary of State] hereby make the following Regulations :—

1. For sub-paragraph (2) of paragraph 1 of the Third Schedule to the National Fire Service (General) Regulations, 1944 (which sub-paragraph relates to the pay of whole-time firemen and firewomen holding the ranks of Divisional Officer, Column Officer, Senior Company Officer, Company Officer, Group Officer and Assistant Group Officer) there shall be substituted the following sub-paragraph :—

“(2) The rate of pay for whole-time firemen or firewomen holding a rank set out in the subjoined table shall be the amount set opposite to that rank in the second column of the table :—

	TABLE					Per annum.		
						£	s.	d.
Divisional Officer .. .. .	..	..	..	..	..	740	0	0
Column Officer .. .. .	..	..	..	..	..	635	0	0
Senior Company Officer .. .. .	..	..	..	..	..	530	0	0
Company Officer .. .. .	..	..	..	..	..	475	0	0
Group Officer .. .. .	..	..	..	..	..	370	0	0
Assistant Group Officer .. .. .	..	..	..	..	..	300	0	0 ”

[869]

2. These Regulations may be cited as the National Fire Service (General) (No. 4) Regulations, 1947. [870]

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## ESSENTIAL WORK (RECALL TO NATIONAL FIRE SERVICE) (REVOCATION) ORDER, 1947

*S. R. & O.*, 1947, No. 857

*May 6, 1947*

The Minister of Labour and National Service by virtue of the powers conferred on him by Regulation 58A of the Defence (General) Regulations, 1939, as extended by the Supplies and Services (Transitional Powers) Act, 1945, and the Orders in Council made thereunder, hereby makes the following Order :—

1. This Order may be cited as the Essential Work (Recall to National Fire Service) (Revocation) Order, 1947, and shall come into force on the 14th May, 1947. [871]

2. The Essential Work (Recall to National Fire Service) Order, 1942 (which makes provision for persons to leave employment in essential work without permission and without giving notice when recalled to whole-time Fire Service or when returned to such service after being placed on reserve) is hereby revoked. [872]

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## FOOD AND DRUGS

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## STATUTES

### CIVIC RESTAURANTS ACT, 1947

(10 & 11 Geo. 6, c. 22)

#### PRELIMINARY NOTE

The purpose of the Civic Restaurants Act, 1947, which came into force on receiving the Royal Assent on April 2, 1947, is to enable local authorities to continue on a permanent basis the restaurant and catering services provided during and since the war under the title of British Restaurants, and to engage in the catering trade and carry on services ancillary thereto without the necessity of securing a private Act of Parliament for that purpose. Only the provisions for England and Wales are dealt with in this Note and in the annotations that follow.

British Restaurants, which arose out of the war-time need to provide additional communal feeding centres for " blitzed " areas, were established under the provisions of the Local Authorities (Community Kitchens and Sale of Food in Public Air Raid Shelters) Order, 1941 (*S. R. & O.*, 1941, No. 103), made under regulation 54B of the Defence (General) Regulations, 1939 (*S. R. & O.*, 1939, No. 927), which order was revoked, as from August 11, 1947, by the Sale of Food (Local Authorities and Public Air Raid Shelters) Revocation Order, 1947 (*S. R. & O.*, 1947, No. 1686; see title *AIR-RAID PRECAUTIONS*, *ante*). In May, 1943, there were over 2,000 British Restaurants serving some 500,000 meals a day, and although

at the end of 1946 the number of such restaurants had dropped almost to half the 1943 level, some 400,000 meals, at an average price of 1s. 3d. per meal, were still being served each day. It is clear, therefore, that there is a continued public demand for the type of services provided by these restaurants.

The present Act empowers specified local authorities to establish and carry on restaurants and otherwise to provide for supplying the public with meals and refreshments and, in addition, to carry on such activities as are reasonably incidental or ancillary to these powers. The local authorities so empowered are, in the administrative county of London, the London County Council, and elsewhere in England and Wales, county borough and county district councils (s. 1 (1)). The powers are limited to these particular types of local authorities in order to avoid the situation of two or more authorities being in a position to use them concurrently in the same area. It may well be desirable, however, in certain areas, for some other local authorities to establish civic restaurants, and provision is accordingly made for delegation of their powers by any of the above specified authorities, in respect of the whole or any part of their area, to any other local authority (s. 1 (2)). The expression "local authority" is defined, for the purposes of the Act, to mean, in addition to the aforesaid authorities, county councils, the Common Council of the City of London and metropolitan borough councils (s. 4 (3)). Accordingly, the London County Council may delegate its powers to the Common Council of the City of London and to the metropolitan borough councils, and, outside the administrative county of London, county borough or county district councils may delegate upwards to the county council. The reason for adopting this form of delegation was explained by the Minister of Food during the Committee Stage of the Bill, in the following words:

"The main reason for this is that local authorities themselves want it this way round. It seems to me sensible that they should want it this way, because the most frequent authorities to use these powers will be the district authorities, the rural and urban district councils. This does not mean that county councils have not a part to play. They will play their part by delegation. If it had been the other way round, and the more frequent authorities to use the powers had been the county councils, we would have put it that way" (H. of C. Official Report, S.C.C., December 10, 1946, cols. 4, 11).

Any authority exercising powers, including delegated powers, under s. 1 of the Act is termed a "civic restaurant authority" (s. 1 (3)). The Act, however, contains no definition of the term "civic restaurant".

The position of civic restaurant authorities in regard to the sale and supply of intoxicating liquor was the subject of considerable debate and amendment during the course of the passage of the Bill. As originally drafted, the Bill placed civic restaurant authorities in the same position as any other persons carrying on the like activities, namely, that they would be entitled to apply for a justices' licence, but, by an amendment made on the Committee Stage, the sale or supply of intoxicating liquor was expressly excluded from the activities in which civic restaurant authorities might engage. Further amendments were moved by the Government on the Report Stage, and the final result has been to restore the provisions originally made by the Bill. The Minister of Food, in moving the amendments, stated that it was the Government's view that the question whether or not a particular civic restaurant authority should sell intoxicating liquor was one to be decided locally by the local authority concerned in each case, and not by the central government (433 H. of C. Official Report 820). Civic restaurant authorities are therefore entitled to apply for justices' licences under the Licensing Acts for the sale of intoxicating liquor in their restaurants. Such a licence will, however, be restricted to authorising the sale of liquor only for consumption in the restaurant with a meal (s. 1 (1), proviso (iii)). Furthermore, no justices' licence may be granted in respect of any civic restaurant established in premises forming part of any church, chapel, or other place of religious worship or used for the purposes of any religious organisation except with the consent of the minister or other person in charge or the consent of the organisation (s. 1 (1), proviso (iv)). Many British Restaurants during the war were established in such premises, and this latter provision will have the effect of prohibiting without consent the sale of intoxicating liquor in these premises if they continue to be used for civic restaurants.

It is expressly provided that a civic restaurant authority in carrying out its activities is to be subject to all enactments and rules of law relating thereto, in-

## ESSENTIAL WORK (RECALL TO NATIONAL FIRE SERVICE) (REVOCATION) ORDER, 1947

*S. R. & O.*, 1947, No. 857

*May 6, 1947*

The Minister of Labour and National Service by virtue of the powers conferred on him by Regulation 58A of the Defence (General) Regulations, 1939, as extended by the Supplies and Services (Transitional Powers) Act, 1945, and the Orders in Council made thereunder, hereby makes the following Order :—

1. This Order may be cited as the Essential Work (Recall to National Fire Service) (Revocation) Order, 1947, and shall come into force on the 14th May, 1947. [871]

2. The Essential Work (Recall to National Fire Service) Order, 1942 (which makes provision for persons to leave employment in essential work without permission and without giving notice when recalled to whole-time Fire Service or when returned to such service after being placed on reserve) is hereby revoked. [872]

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## FOOD AND DRUGS

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## STATUTES

### CIVIC RESTAURANTS ACT, 1947

(10 & 11 Geo. 6, c. 22)

#### PRELIMINARY NOTE

The purpose of the Civic Restaurants Act, 1947, which came into force on receiving the Royal Assent on April 2, 1947, is to enable local authorities to continue on a permanent basis the restaurant and catering services provided during and since the war under the title of British Restaurants, and to engage in the catering trade and carry on services ancillary thereto without the necessity of securing a private Act of Parliament for that purpose. Only the provisions for England and Wales are dealt with in this Note and in the annotations that follow.

British Restaurants, which arose out of the war-time need to provide additional communal feeding centres for "blitzed" areas, were established under the provisions of the Local Authorities (Community Kitchens and Sale of Food in Public Air Raid Shelters) Order, 1941 (*S. R. & O.*, 1941, No. 103), made under regulation 54B of the Defence (General) Regulations, 1939 (*S. R. & O.*, 1939, No. 927), which order was revoked, as from August 11, 1947, by the Sale of Food (Local Authorities and Public Air Raid Shelters) Revocation Order, 1947 (*S. R. & O.*, 1947, No. 1686; see title *AIR-RAID PRECAUTIONS*, *ante*). In May, 1943, there were over 2,000 British Restaurants serving some 500,000 meals a day, and although



at the end of 1946 the number of such restaurants had dropped almost to half the 1943 level, some 400,000 meals, at an average price of 1s. 3d. per meal, were still being served each day. It is clear, therefore, that there is a continued public demand for the type of services provided by these restaurants.

The present Act empowers specified local authorities to establish and carry on restaurants and otherwise to provide for supplying the public with meals and refreshments and, in addition, to carry on such activities as are reasonably incidental or ancillary to these powers. The local authorities so empowered are, in the administrative county of London, the London County Council, and elsewhere in England and Wales, county borough and county district councils (s. 1 (1)). The powers are limited to these particular types of local authorities in order to avoid the situation of two or more authorities being in a position to use them concurrently in the same area. It may well be desirable, however, in certain areas, for some other local authorities to establish civic restaurants, and provision is accordingly made for delegation of their powers by any of the above specified authorities, in respect of the whole or any part of their area, to any other local authority (s. 1 (2)). The expression "local authority" is defined, for the purposes of the Act, to mean, in addition to the aforesaid authorities, county councils, the Common Council of the City of London and metropolitan borough councils (s. 4 (3)). Accordingly, the London County Council may delegate its powers to the Common Council of the City of London and to the metropolitan borough councils, and, outside the administrative county of London, county borough or county district councils may delegate upwards to the county council. The reason for adopting this form of delegation was explained by the Minister of Food during the Committee Stage of the Bill, in the following words :

"The main reason for this is that local authorities themselves want it this way round. It seems to me sensible that they should want it this way, because the most frequent authorities to use these powers will be the district authorities, the rural and urban district councils. This does not mean that county councils have not a part to play. They will play their part by delegation. If it had been the other way round, and the more frequent authorities to use the powers had been the county councils, we would have put it that way" (H. of C. Official Report, S.C.C., December 10, 1946, cols. 4, 11).

Any authority exercising powers, including delegated powers, under s. 1 of the Act is termed a "civic restaurant authority" (s. 1 (3)). The Act, however, contains no definition of the term "civic restaurant".

The position of civic restaurant authorities in regard to the sale and supply of intoxicating liquor was the subject of considerable debate and amendment during the course of the passage of the Bill. As originally drafted, the Bill placed civic restaurant authorities in the same position as any other persons carrying on the like activities, namely, that they would be entitled to apply for a justices' licence, but, by an amendment made on the Committee Stage, the sale or supply of intoxicating liquor was expressly excluded from the activities in which civic restaurant authorities might engage. Further amendments were moved by the Government on the Report Stage, and the final result has been to restore the provisions originally made by the Bill. The Minister of Food, in moving the amendments, stated that it was the Government's view that the question whether or not a particular civic restaurant authority should sell intoxicating liquor was one to be decided locally by the local authority concerned in each case, and not by the central government (433 H. of C. Official Report 820). Civic restaurant authorities are therefore entitled to apply for justices' licences under the Licensing Acts for the sale of intoxicating liquor in their restaurants. Such a licence will, however, be restricted to authorising the sale of liquor only for consumption in the restaurant with a meal (s. 1 (1), proviso (iii)). Furthermore, no justices' licence may be granted in respect of any civic restaurant established in premises forming part of any church, chapel, or other place of religious worship or used for the purposes of any religious organisation except with the consent of the minister or other person in charge or the consent of the organisation (s. 1 (1), proviso (iv)). Many British Restaurants during the war were established in such premises, and this latter provision will have the effect of prohibiting without consent the sale of intoxicating liquor in these premises if they continue to be used for civic restaurants.

It is expressly provided that a civic restaurant authority in carrying out its activities is to be subject to all enactments and rules of law relating thereto, in-



cluding the enactments relating to the sale of intoxicating liquor, in like manner as other persons carrying on like activities (s. 1 (4)).

A civic restaurant authority may be authorised by the Minister of Health to purchase land compulsorily for the purposes of the Act, and the uniform procedure laid down by the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Halsbury's Statutes 52), for authorising the compulsory purchase of land by a local authority applies to the authorisation of any such purchase (s. 2 (1)). The speedy procedure provided by s. 2 of the Act of 1946, for obtaining possession of land in urgent cases is not, however, available to a civic restaurant authority, and they will not, moreover, be authorised to purchase compulsorily any premises which are being used by any other person for an existing catering business (s. 2 (1), proviso).

In addition to the above powers of compulsory purchase a civic restaurant authority may be authorised to acquire land compulsorily for a civic restaurant under the provisions of s. 26 of the Requisitioned Land and War Works Act, 1945 (38 Halsbury's Statutes 605), as amended by the Acquisition of Land (Authorisation Procedure) Act, 1946, s. 6 and Sched. IV (39 Halsbury's Statutes 60, 69), with the result that any work which has been carried out by such authority on premises in connection with their use as a British Restaurant will be left out of account in arriving at the price to be paid on a compulsory acquisition of the premises (s. 2 (2)).

Civic restaurant authorities are under an obligation to keep accounts of receipts and expenses in connection with the running of their restaurants, and the form in which these accounts are to be prepared and the particulars which they must contain, are to be prescribed by the Minister of Food (s. 3 (1)). Every endeavour is to be made to ensure that a civic restaurant pays its way, and if the accounts of any civic restaurant authority show a deficit in respect of each of three consecutive years, that authority will lose its power to carry on a restaurant at the expiration of six months from the end of the last of those three years. If, however, the Minister of Food considers that such authority will within a reasonable time be able to put their restaurant on a paying basis, he may allow them to continue to operate, and he may, furthermore, restore to an authority powers which it has lost under the above provision, if he considers that, by reason of any change of circumstances, that authority would be able to operate its restaurant on a paying basis (s. 3 (2)).

Any expenses incurred by a county council (other than in the administrative county of London) in running a civic restaurant under powers delegated to them by a district council, are to be borne by the district council, which will also get the benefit of any profit made by the county council (s. 3 (3)), and any deficit in the civic restaurant accounts of the Common Council of the City of London is to be met out of the general rate (s. 3 (4)). [873]

*An Act to empower local authorities to establish and carry on restaurants, and otherwise provide for the supply to the public of meals and refreshments, and for purposes connected with the matters aforesaid.* [874] [2nd April, 1947.]

**1. Power of local authorities to establish restaurants.**—(1) The following authorities, that is to say—

- (a) in the administrative county of London, the London County Council,
- (b) elsewhere in England and Wales, the council of a county borough or county district,
- (c) in Scotland, a county or town council,

may establish and carry on restaurants and otherwise provide for the supply to the public of meals and refreshments, and may carry on such activities as are reasonably incidental or ancillary to the activities aforesaid :

Provided that—

- (i) where the Minister of Food is satisfied that the council of any county in Scotland are unreasonably refusing to exercise their powers under this Act in any district of the county, he may by order direct that the powers of the county council, so far as relating to that district, shall be exercisable by the district council instead of by the county council ; and

- (ii) this subsection shall not authorise the grant of a certificate under the Licensing (Scotland) Acts, 1903 to 1934, for the sale of exciseable liquor in any such restaurant in Scotland; and
- (iii) a justices' licence granted under the Licensing Acts, 1910 to 1934, for the sale of intoxicating liquor in any such restaurant in England or Wales shall only authorise the sale of such liquor for consumption in the restaurant with a meal; and
- (iv) such a licence shall not be granted in respect of any such restaurant established in premises forming part of, or used for the purposes of, any church, chapel or other place of religious worship or used for the purposes of any religious organisation except with the consent of the incumbent, minister, or other person in charge of the church, chapel or place of worship or, as the case may be, the consent of the religious organisation. [875]

(2) Any such authority may delegate their powers under the foregoing provisions of this section, in respect of the whole of their area or any part thereof, to any other local authority. [876]

(3) An authority exercising powers under this section, including an authority exercising delegated powers, is hereafter in this Act referred to as a "civic restaurant authority". [877]

(4) A civic restaurant authority shall, in carrying on any activities under this section, be subject to all enactments and rules of law relating thereto, including, in England and Wales, the enactments relating to the sale of intoxicating liquor, in like manner as other persons carrying on the like activities. [878]

*County district.*—A county district is either a non-county borough, an urban district or a rural district; see the Local Government Act, 1933, ss. 1, 305 (26 Halsbury's Statutes 306, 466).

*Ancillary activities.*—On the question of the scope of the activities in which a civic restaurant authority is empowered to engage, it was stated by the Government spokesman in the House of Lords during the passage of the Bill that the section was designed to enable an authority to carry on all the normal activities that are ancillary to the running of a catering establishment. He instanced the provision of morning coffee and afternoon teas, a "cash and carry" service by which customers might buy the same food as was served in the restaurant and take it away with them, the supplying of bulk meals in heat-preserving containers to schools, factories and groups of workers, and the sale of cigarettes and sweets (146 H. of L. Official Report 172, 430).

*Justices' licence.*—This expression is defined by s. 110 of the Licensing (Consolidation) Act, 1910 (9 Halsbury's Statutes 1042) to mean a justices' licence for the sale of any intoxicating liquor granted in accordance with that Act.

*Licensing Acts, 1910 to 1934.*—The Licensing (Consolidation) Act, 1910 (9 Halsbury's Statutes 985); the Licensing Act, 1921 (9 Halsbury's Statutes 1055); the Intoxicating Liquor (Sale to Persons under Eighteen) Act, 1923 (9 Halsbury's Statutes 1067); and the Licensing (Permitted Hours) Act, 1934 (27 Halsbury's Statutes 349).

*Local authority.*—This expression means the council of a county, county borough or county district, the Common Council of the City of London and the council of a metropolitan borough (see s. 4 (3), *post*).

*Intoxicating liquor.*—This expression is defined by the Licensing (Consolidation) Act, 1910, s. 110 (9 Halsbury's Statutes 1042), to mean spirits, wine, beer, porter, cider, perry and sweets, and any fermented, distilled, or spirituous liquor which cannot, according to any law for the time being in force, be legally sold without an excise licence.

**2. Compulsory purchase powers.**—(1) A civic restaurant authority may be authorised by the Minister of Health to purchase land compulsorily for the purposes of this Act, and the Acquisition of Land (Authorisation Procedure) Act, 1946, shall have effect as if this section had been in force immediately before the passing of that Act:

Provided that section two of that Act shall not apply to the compulsory purchase of land for the purposes of this Act and a civic restaurant authority shall not be authorised under this subsection to purchase compulsorily for the purposes of this Act any premises which are being used by any other person wholly or mainly as a restaurant or otherwise for the supply to the public of meals and refreshments.

In the application of this subsection to Scotland, for the reference to the

Minister of Health there shall be substituted a reference to the Secretary of State. [879]

(2) Section twenty-six of the Requisitioned Land and War Works Act, 1945 (which empowers local authorities to acquire land which they have been authorised under Defence Regulations to use for purposes for which they can acquire land compulsorily under any Act) shall apply to any local authority, being a civic restaurant authority, as if this Act had been in force immediately before the passing of that Act, and the other provisions of the Requisitioned Land and War Works Act, 1945, relating to the acquisition of land under the said section twenty-six shall have effect accordingly. [880]

*Civic restaurant authority.*—Any authority exercising powers under s. 1, *ante*, including an authority exercising delegated powers (s. 1 (3), *ante*).

*Acquisition of Land (Authorisation Procedure) Act, 1946.*—39 Halsbury's Statutes 52. The effect of providing that that Act is to have effect as if the present section had been in force immediately before the passing of that Act is, in accordance with s. 1 (1) thereof, to make the uniform procedure for authorising compulsory purchases of land by local authorities provided by s. 1 (1) thereof and Sched. I thereto applicable to compulsory purchases under the present section.

S. 2 of the Act, which is excluded in relation to civic restaurant authorities, temporarily provides a speedy method of acquiring land in cases of urgency.

*Requisitioned Land and War Works Act, 1945, s. 26.*—38 Halsbury's Statutes 605. This section makes special provision for the compulsory acquisition by a local authority of land which they have, under Defence Regulations, been directed to do work on, or authorised to use, for any purpose for which they are or can be authorised under any Act to acquire land compulsorily, and s. 27 (which, with s. 26, forms Part V of the Act) prescribes the procedure on such a compulsory purchase. Notice to treat for the compulsory purchase of land under Part V must be given within two years from the end of the war period, which period extends to December 10, 1950 (see the Requisitioned Land and War Works Act, 1945, s. 59; 38 Halsbury's Statutes 623, and the Supplies and Services (Transitional Powers) Act, 1945, ss. 5 (5), 8; 38 Halsbury's Statutes 634, 635). Where land is compulsorily acquired under the said Part V, s. 41 of the Act provides for the elimination, in the assessment of the compensation payable, of any value due to any war work done by the acquiring authority. Thus, a local authority which has done work on land in connection with the establishment of a British Restaurant will be able compulsorily to acquire the land in their capacity as a civic restaurant authority without being required to pay compensation in respect of the value of such work. Ss. 26 and 27 of the Requisitioned Land and War Works Act, 1945 (38 Halsbury's Statutes 605, 606), are amended by s. 6 of, and Sched. IV to, the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Halsbury's Statutes 60, 69), in order to bring the procedure for compulsory acquisition under Part V of the Act of 1945 into line with the uniform procedure established by s. 1 of, and Sched. I to, the Act of 1946, for authorising compulsory purchases of land by local authorities.

**3. Financial provisions.**—(1) Every civic restaurant authority shall keep an account of their income under this Act and their expenditure under this Act on income account, and the form of the account and the particulars to be included therein shall be prescribed by the Minister of Food, after consultation with such associations of local authorities as appear to him to be concerned. [881]

(2) Every civic restaurant authority shall use their best endeavours to ensure that their income under this Act is sufficient to defray their expenditure thereunder and if the account kept by any such authority under the last foregoing subsection shows a deficit in respect of each of three consecutive financial years, the said powers shall cease to be exercisable by that authority at the expiration of six months from the end of the last of those years:

Provided that—

- (a) if the Minister of Food considers that a civic restaurant authority whose account shows such a deficit as aforesaid will, within a reasonable period, be able to defray their expenditure under this Act out of their income thereunder, he may, subject to such conditions as he thinks fit, postpone or exclude the operation of this subsection as respects that deficit;
- (b) if the Minister of Food considers that a civic restaurant authority whose powers have ceased to be exercisable by virtue of this

subsection would, by reason of any change of circumstances, be able to defray their expenditure under this Act out of their income thereunder, if the said powers were restored, he may direct that the said powers shall again become exercisable and that this subsection shall have effect as if they had not previously been exercised. [882]

(3) Any expenses incurred under this Act by the council of a county in England or Wales, other than the administrative county of London, shall be treated as expenses incurred for a special county purpose and chargeable on the county district or county districts for the benefit of which those expenses are incurred, and all receipts of the county council in exercising powers under this Act shall be treated as receipts for that special county purpose. [883]

(4) Any expenses incurred under this Act by the Common Council of the City of London shall, in so far as they cannot be defrayed out of the receipts of the Council under this Act, be defrayed out of the general rate. [884]

(5) Any expenses incurred under this Act by a civic restaurant authority in Scotland shall, in so far as they cannot be defrayed out of the receipts of the authority under this Act, be defrayed by the authority, or, where the authority are exercising delegated powers and so agree with the county or town council by whom the powers are delegated, by that county or town council, out of such rate payable by owners and occupiers in equal proportions as the authority or the council may determine and any excess of such receipts over such expenses shall be applied in reduction of that rate. [885]

(6) Expenditure incurred by a district council under this Act shall not be taken into account in any calculation as to the limit imposed on the district council rate by section twenty-six of the Local Government (Scotland) Act, 1929. [886]

(7) A civic restaurant authority in Scotland who incur expenditure under this Act or a county or town council on whose behalf expenditure is incurred by a civic restaurant authority in the exercise of delegated powers may, subject to the provisions of subsection (2) of section twenty-three of the Local Government (Scotland) Act, 1929, borrow such sums as may be required to meet any expenditure of a capital nature, or the cost of executing any work, or providing any plant or equipment, or doing any other thing where, having regard to the nature of the work, plant, equipment or thing, the cost ought to be spread over a period of years :

Provided that—

- (a) sums so borrowed shall be repaid within such period not exceeding sixty years as the Secretary of State may determine ;
- (b) nothing in this subsection shall authorise the exercise of the power of borrowing money thereby conferred otherwise than in compliance with the provisions of the Local Authorities Loans Act, 1945, of any Defence Regulation within the meaning of the Supplies and Services (Transitional Powers) Act, 1945, for the time being having effect by virtue of that Act, and of any orders for the time being in force, made by the Treasury under section one of the Borrowing (Control and Guarantees) Act, 1946. [887]

*Civic restaurant authority.*—Any authority exercising powers under s. 1 (1), *ante*, including an authority exercising delegated powers (s. 1 (3), *ante*).

*Particulars included in accounts.*—The Parliamentary Secretary to the Ministry of Food stated during the course of the debate in Committee that the particulars to be included in the prescribed form of account would include particulars as to heating, cleaning, lighting, rates, rent and all other items usually shown on the account of a catering establishment. It was not, however, intended to prescribe a separate account for each civic restaurant, since commercial caterers do not usually produce for their shareholders separate accounts for each restaurant (H. of C. Official Report, S.C.C., January 30, 1947, col. 227).

*Special county purposes.*—This is defined by the Local Government Act, 1933, s. 180 (1) (b) (26 Halsbury's Statutes 405), to mean any purposes for expenditure on which part only of the county is chargeable, whether by reason of any part of the county being exempt therefrom or otherwise. S. 181 provides for a county council keeping a separate account of receipts and payments out of the County Fund for any special county purpose, and s. 183 provides for the levying of a rate to meet liabilities in respect of expenditure for a special county purpose on that part of the county chargeable therewith.

**4. Short title, extent, and interpretation.**—(1) This Act may be cited as the Civic Restaurants Act, 1947. [888]

(2) This Act shall not extend to Northern Ireland. [889]

(3) In this Act the expression "local authority" means, in England and Wales, the council of a county, county borough or county district, the Common Council of the City of London and the council of a metropolitan borough, and, in Scotland, a county, town or district council. [890]

*County district.*—A county district is either a non-county borough, an urban district or a rural district; see the Local Government Act, 1933, ss. 1, 305 (26 Halsbury's Statutes 306, 466).

## ORDERS, CIRCULARS AND MEMORANDA

### ICE CREAM (HEAT TREATMENT, ETC.) REGULATIONS, 1947

*S. R. & O.*, 1947, No. 612

*April 2, 1947*

In exercise of the powers conferred upon him by the Food and Drugs Act, 1938, the Minister of Health hereby makes the following regulations:—

1. These regulations may be cited as the Ice-Cream (Heat Treatment, etc.) Regulations, 1947, and shall come into operation on the first day of May, 1947, with the exception of regulation 3 (b) (iv) which shall come into operation on a date to be appointed by the Minister of Health. [891]

2. In these regulations—

"ice-cream" includes water ices and any article, under whatever description it is sold, which is so similar to ice-cream as to constitute a substitute therefor;

"ingredients" includes sugar and dried egg, but does not include colouring or flavouring materials or fruit, nuts, chocolate and other similar substances; and

"complete cold mix" means a product which is capable of manufacture into ice-cream with the addition of water only, is sent out by the manufacturer in airtight containers, and has been made by evaporating a liquid mixture which has already been submitted to heat treatment comparable with that prescribed in these regulations. [892]

3. The following requirements shall be observed in the manufacture of ice-cream intended for sale for human consumption:—

(a) Where a complete cold mix is used which is reconstituted with wholesome drinking water and to which nothing is added other than colouring or flavouring materials, fruit, nuts, chocolate or other similar substances, the reconstituted product shall be converted into ice-cream within one hour of reconstitution.

(b) In any other case, after the ingredients have been mixed together the following provisions shall apply—

(i) the mixture shall not be kept for more than one hour at any temperature which exceeds 45° Fahrenheit before being subjected to heat treatment in accordance with the next following sub-paragraph ;

(ii) the mixture shall be subjected to heat treatment as follows—

It shall be raised to and kept at a temperature of not less than 150° Fahrenheit for 30 minutes or alternatively of not less than 160° Fahrenheit for 10 minutes ;

(iii) after the mixture has been subjected to heat treatment as aforesaid it shall be reduced to a temperature of not more than 45° Fahrenheit within 1½ hours and shall be kept at such a temperature until the freezing process is begun ;

(iv) such indicating and recording thermometers shall be used as the local authority considers requisite for indicating and recording the temperatures to or at which the ice-cream is raised, kept or reduced ;

(v) the records of any thermometers used to record the temperatures to or at which the ice-cream is raised, kept or reduced shall be preserved for a period of not less than one month ;

(vi) all apparatus used for the purposes of this paragraph shall be installed, maintained and operated to the satisfaction of the local authority. [893]

4. Ice-cream shall not be sold or offered for sale unless either—

(a) it has been kept at a temperature not exceeding 28° Fahrenheit since it was frozen, or

(b) if its temperature has risen above 28° Fahrenheit at any time since it was frozen, it has again been subjected to the treatment prescribed by sub-paragraphs (i), (ii) and (iii) of regulation 3 (b) and, after having again been frozen, has been kept at a temperature not exceeding 28° Fahrenheit. [894]

5. Ice-cream shall be protected from dirt, dust or other contamination at all times during its manufacture, storage and distribution and all apparatus and utensils brought into contact with ice-cream during its manufacture, storage or distribution shall be thoroughly cleansed immediately after use and shall be kept clean at all times. [895]

6. Any person failing to comply with any of the provisions of these regulations shall be guilty of an offence, and shall be liable, in the case of a first offence, to a fine not exceeding twenty pounds, and, in the case of a subsequent offence, to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months, or to both such a fine and such imprisonment :

Provided that it shall be a defence for a defendant charged with an offence under regulation 3 (b) (iii) which is alleged to have been committed before the first day of May, 1948, to prove that before the date of the alleged offence suitable apparatus to enable him to comply with that regulation had been ordered by him or on his behalf and had not been delivered and that he had taken all practicable steps to comply as far as possible with the said regulation. [896]

7. The authorities for enforcing and executing these regulations shall be local authorities within the meaning of section 64 of the Food and Drugs Act, 1938. [897]

**PRESERVES (AMENDMENT NO. 9) ORDER, 1947***S. R. & O., 1947, No. 755**April 24, 1947 [898]*

This order, with numerous other orders, has been revoked by the Preserves Order, 1947 (*S. R. & O., 1947, No. 1515, infra*). It increased the maximum prices of jam and marmalade (other than "special standard" grapefruit marmalade) manufactured in the United Kingdom, and of fruit curd.

**PRESERVES (AMENDMENT NO. 10) ORDER, 1947***S. R. & O., 1947, No. 878**May 9, 1947 [899]*

This order, with numerous other orders, has been revoked by the Preserves Order, 1947 (*S. R. & O., 1947, No. 1515, infra*). It increased the maximum prices of imported honey.

**PRESERVES ORDER, 1947***S. R. & O., 1947, No. 1515**July 18, 1947*

In exercise of the powers conferred upon him by Regulations 55, 55AA and 55AB of the Defence (General) Regulations, 1939, as having effect by virtue of the Supplies and Services (Transitional Powers) Act, 1945, and of all other powers him enabling, the Minister of Food hereby makes the following Order :—

**PART I—INTERPRETATION****1.—(1) In this Order—**

"The Minister" means the Minister of Food.

"Buy" includes offer or agree to buy; and "sell" includes offer or agree to sell or expose for sale.

"Catering business" includes the business or undertaking of an inn, public-house, hotel, restaurant, buffet, coffee-stall or of any place of refreshment open to the public, or of any club, boarding-house, refreshment contractor or canteen; and the word "caterer" shall be construed accordingly.

"Container" means the jar, bottle, can or other receptacle in which any preserves are or were immediately contained; and "returnable container" means a container other than a can.

"Extracted honey" means honey expressed or extracted from the honeycomb.

"First hand sale" means any sale to a wholesaler.

"Fresh Fruit standard jam" and "fresh fruit standard marmalade" have the same meanings as in the Food Standards (Preserves) Order, 1944, as amended.

"Fruit curd" means—

(a) the articles commonly known as lemon cheese and lemon curd; and

(b) any substantially similar article made from or so as to produce the flavour of, lemons or any other fruit.



"Full fruit standard jam" and "full fruit standard marmalade" have the same meanings as in the Food Standards (Preserves) Order, 1944, as amended.

"Heather honey" means honey produced wholly or mainly from nectar gathered from heather.

"Home produced honey" means honey produced by bees kept in the United Kingdom or Eire.

"Imitation honey" means any manufactured product (whether or not containing honey) made up so as to resemble honey in appearance, consistency and flavour.

"Imported honey" means honey imported into the United Kingdom, other than honey produced by bees kept in Eire.

"Jam" includes marmalade, jam in the form of jelly, jam made from fruit or vegetables or both, and jam described as "conserve" or "preserve" or by any other name.

"Loose", in relation to any preserves, means preserves sold otherwise than in a container in which they have been packed in advance ready for retail sale.

"Marmalade" means any jam manufactured from citrus fruit with or without the addition of the juice or pectin of other fruit.

"Mincemeat" means—

(a) the mixture of fresh or dried fruit with other ingredients, commonly known as mincemeat; and

(b) any substantially similar article.

"Multiple retailer" means a retailer carrying on business at not less than ten retail shops.

"No.  $\frac{1}{2}$  size container", in relation to any fruit curd or mincemeat, means a container of a capacity of not less than  $6\frac{1}{4}$  fluid ounces or more than  $6\frac{3}{4}$  fluid ounces and containing not less than  $7\frac{1}{4}$  ounces net weight.

"No. 1 size container", in relation to any fruit curd or mincemeat, means a container of a capacity of not less than  $12\frac{1}{2}$  fluid ounces or more than  $13\frac{1}{4}$  fluid ounces and containing not less than  $14\frac{1}{2}$  ounces net weight.

"No. 2 size container", in relation to any fruit curd or mincemeat, means a container of a capacity of not less than 25 fluid ounces or more than  $26\frac{1}{4}$  fluid ounces and containing not less than 29 ounces net weight.

"Pack" means to pack preserves into any container; and the word "packer" shall be construed accordingly.

"Package" means any outer receptacle in which containers are or were packed.

"Preserves" mean jam, honey, fruit curd and mincemeat.

"Sale by retail" means any sale to a person buying otherwise than for the purposes of resale, and includes any sale to a person for the purposes of his catering business or for use in the manufacture or preparation for sale of any other article; and the word "retailer" shall be construed accordingly.

"Sale by wholesale" means any sale other than a first-hand sale or a sale by retail; and the word "wholesaler" shall be construed accordingly.

"Special standard marmalade" has the same meaning as in the Food Standards (Preserves) Order, 1944, as amended.

"Specified brand of honey" means imported honey in respect of which a certificate, for the time being in force, has been granted by or on behalf of the Minister certifying that such honey is a specified brand of honey for the purposes of this Order.

(2) Reference in this Order to the purchase or sale of preserves by a wholesaler, manufacturer, retailer or other class of trader means the purchase or sale by him in the course of his business of such class of trader. [900]

## PART II—MANUFACTURE, PACKING, ETC.

2.—(1) Except under and in accordance with the terms of a licence granted by or on behalf of the Minister for the purposes of this Article, no person shall engage in the manufacture of jam, fruit curd or mincemeat.

(2) The provisions of this Article shall not apply to—

(a) the manufacture by any person during the period of twelve months commencing on the 23rd day of July, 1944, or during any succeeding period of twelve months thereafter, of a total quantity of jam, fruit curd and mincemeat not exceeding 30 cwt.; or

(b) the manufacture of jam, fruit curd or mincemeat otherwise than for sale (whether or not as part of any other article). [901]

3. Except under and in accordance with the terms of a licence granted by or on behalf of the Minister for the purposes of this Article, no person shall engage by way of trade or business in—

(a) the blending of imported honey (including the blending thereof with home produced honey);

(b) the packing of imported honey or of any blend of honey containing imported honey; or

(c) the manufacture or packing of imitation honey. [902]

## PART III—MAXIMUM PRICES

4.—(1) No person shall sell or buy any jam manufactured in the United Kingdom or any fruit curd or mincemeat at a price exceeding the maximum price applicable in accordance with the provisions of the Second Schedule to this Order.

(2) No person shall sell any jam manufactured in the United Kingdom unless it is of a description and is packed in a container in respect of which prices are prescribed in the Second Schedule to this Order or a container containing a multiple of 7 lb. net; provided that this paragraph shall not apply to the sale by retail of loose jam.

(3) No person shall sell any fruit curd or mincemeat packed in a container containing 2 lb. net weight or less, except a No.  $\frac{3}{4}$  size container, a No. 1 size container or a No. 2 size container; provided that this paragraph shall not apply to the sale by retail of loose fruit curd or loose mincemeat.

(4) The provisions of this Article shall not apply to—

(a) any jam of a description specified in the First Schedule to this Order; or

(b) any jam, fruit curd or mincemeat that has been manufactured without a licence by virtue of proviso (a) to Article 2 of this Order, when it is sold by retail by its manufacturer. [903]

5. No person shall sell or buy any imported jam of a description specified in the Third Schedule to this Order at a price exceeding the maximum price applicable in accordance with the provisions of that Schedule. [904]

6. No person shall sell or buy any honey of a description specified in the Fourth Schedule to this Order at a price exceeding the maximum price applicable in accordance with the provisions of that Schedule. [905]

## PART IV—RECORDS AND RETURNS

7. Every person licensed to manufacture jam under Article 2 of this Order shall furnish to the Minister a return in respect of each week (ending

at midnight on Saturday) showing the quantities and descriptions of fruit delivered to him during that week ; and such return shall be so furnished not later than the end of the week following that to which it relates. [906]

8. Every person licensed to blend, pack or manufacture honey under Article 3 of this Order shall keep or cause to be kept an accurate record of—

- (a) all purchases by him of imported honey for packing, and all purchases by him of home produced honey for blending with imported honey ;
- (b) all purchases by him of honey, invert sugar or any other ingredient for manufacturing imitation honey ;
- (c) all sales by him of imported honey (including any blend of honey containing imported honey) blended or packed by him ; and
- (d) all sales by him of imitation honey manufactured or packed by him ;

and such record shall show in the case of each purchase or sale the date thereof, the name and address of the person from or to whom the honey or the invert sugar or other ingredient as aforesaid or the imitation honey (as the case may be) was purchased or sold, the quantity purchased or sold and the price paid or received. [907]

9.—(1) Every person who sells preserves otherwise than by retail shall keep or cause to be kept an accurate record of—

- (a) all purchases and sales by him of preserves otherwise than by retail ; and such record shall include in respect of each purchase or sale the date thereof, the name and address of the person from whom the preserves were purchased or to whom they were sold, the net weight of each description of preserves purchased or sold, the price paid or received, and particulars of all additions to the maximum price (including any charge by way of deposit in respect of a returnable container) made in accordance with the provisions of this Order ; and
- (b) the stocks of preserves held by him from time to time.

(2) Every person who sells preserves by retail shall keep or cause to be kept an accurate record of all purchases by him of preserves ; and such record shall include in respect of each purchase the date thereof, the name and address of the person from whom the preserves were purchased, the net weight of each description of preserves purchased, the price paid, and particulars of all additions to the maximum price (including any charge by way of deposit in respect of a returnable container) made in accordance with the provisions of this Order. [908]

10.—(1) The retention by any person of an invoice or a copy of an invoice shall as regards the particulars mentioned therein be a sufficient compliance by him with the provisions of this Part of this Order.

(2) Every person who is required by this Part of this Order to keep any record shall retain it for one year from the date of the transaction to which it relates, or, in the case of a record of stocks, from the date when he took delivery of such stocks. [909]

#### PART V—LABELLING OF CONTAINERS

11.—(1) No person shall sell any preserves to which this Article applies in a container unless there appears on a label or labels affixed to the container a true statement as to the matters hereafter mentioned in this Article. The said statement shall be clearly legible and shall appear in a prominent position on the label or labels ; and, where the container is sold in a wrapper,

a label or labels complying with the provisions of this Article shall, except where the wrapper is transparent and bears no other label or printed matter be affixed to the outside of the wrapper.

(2) This Article applies to—

- (a) jam manufactured in the United Kingdom,
- (b) fruit curd and mincemeat,
- (c) heather honey,
- (d) imported honey,
- (e) any preserves authorised by virtue of a licence granted under this Order to be sold at a price exceeding the maximum price prescribed by this Order, and
- (f) any jam, fruit curd or mincemeat permitted by virtue of paragraph (4) (b) of Article 4 of this Order to be sold by retail by its manufacturer free of price-control.

(3) The said statement—

- (i) in the case of jam (other than marmalade) manufactured in the United Kingdom, shall contain the number of the relevant licence (if any) granted for the purposes of Article 2 of this Order immediately preceded by the letter “L”, and shall specify whether the said jam is fresh fruit standard or full fruit standard jam ;
- (ii) in the case of marmalade manufactured in the United Kingdom shall contain the number of the relevant licence (if any) granted for the purposes of Article 2 of this Order immediately preceded by the letter “L”, and shall specify whether the said marmalade is fresh fruit standard, full fruit standard or special standard marmalade ;
- (iii) in the case of fruit curd or mincemeat, shall contain the number of the relevant licence (if any) granted for the purposes of Article 2 of this Order immediately preceded by the letter “L” ;
- (iv) in the case of heather honey, shall contain the number of the relevant licence (if any) granted for the purposes of Article 3 of this Order immediately preceded by the letters “LH”, and shall contain the words “heather honey” ;
- (v) in the case of imported honey or any blend of honey containing imported honey, shall contain the number of the relevant licence (if any) granted for the purposes of Article 3 of this Order immediately preceded by the letters “LH” ;
- (vi) in the case of any specified brand of honey, shall contain (in addition to anything contained therein by virtue of any other sub-paragraph of this paragraph) the words—

“By virtue of a certificate issued by the Minister of Food to the packer named hereon, this honey may be sold at a price not exceeding (x) ”

(such statement to be completed by inserting at (x) the maximum price applicable under this Order to the honey, and the name and address of the packer to whom the certificate in respect of such honey has been issued) ;

- (vii) in the case of any preserves authorised by virtue of a licence granted under this Order to be sold at a price exceeding the maximum price prescribed by this Order, shall contain (in addition to anything contained therein by virtue of any other sub-paragraph of this paragraph) the words “maximum retail price” followed by such price in figures not less than one-quarter of an inch in height, after which shall be added the words “prescribed by Licence No.” immediately followed by the number of the relevant licence ; and

(viii) in the case of any jam, fruit curd or mincemeat to which paragraph (4) (b) of Article 4 of this Order applies, shall contain (in addition to anything contained therein by virtue of any other sub-paragraph of this paragraph) a statement to the effect that the said jam, mincemeat or fruit curd is permitted to be sold by retail by its manufacturer free of price-control.

(4) A label or labels required by this Article to be affixed to any container shall not be so affixed except by the manufacturer, blender or packer of the preserves contained in such container.

(5) No person shall remove, alter, deface or render illegible any label affixed to any container pursuant to the provisions of this Article :

Provided that it shall be a defence in any proceedings under this paragraph of this Article for the person charged to prove either—

- (a) that the container was at the time of the infringement in his possession otherwise than for sale ; or
- (b) that he acted without intent to deceive.

(6) Any honey not labelled in accordance with the provisions of paragraphs (3) (iv) or (3) (v) and (vi) of this Article shall for the purposes of this Order be deemed not to be heather honey or (as the case may be) a specified brand of honey. [910]

#### PART VI—GENERAL

12.—(1) Where in any prosecution a person is charged with an infringement of this Order by reason of—

- (a) the inaccuracy or omission of any particular required to be shown on a label affixed to a container pursuant to Article 11 hereof ; or
- (b) the preserves sold by him being of a description other than the description under which he sold them ; or
- (c) the preserves sold by him being of a weight less than was represented by him on their being sold ;

it shall be a defence for him to prove—

- (i) in the case of a charge relating to the inaccuracy or omission of any particular as aforesaid, that such particular was shown on or (as the case may be) omitted from the label when the container was purchased by him ; or
- (ii) in the case of a charge relating to description or weight as aforesaid, that he purchased the preserves in the container in which he sold them, and with a written warranty that they were of the description under which he sold them or (as the case may be) of the weight that he represented ;

and in either case that at the time of the alleged infringement he had no reason to believe that this Order was being infringed.

(2) A person shall not be entitled to avail himself of any defence provided by this Article unless he has sent to the prosecutor within fourteen days of the service of the summons a copy of the label or warranty upon which he intends to rely, with a notice stating that he intends to rely on it and specifying the name and address of the person from whom he received it, and has also sent a like notice of his intention to that person.

(3) Where the person so charged is a servant of the person who purchased the preserves with such a label or (as the case may be) under such a warranty, he shall be entitled to rely upon the provisions of this Article in the same way as his employer would have been entitled to do if he had been so charged.

(4) The person by whom any such label or warranty is alleged to have been given shall be entitled to appear at the hearing and give evidence.

(5) For the purposes of this Article any statement relating to description or weight on any label affixed to the wrapper or container of any preserves, or in an invoice or similar document relating to any preserves mentioned in that invoice or document, shall be deemed to be a written warranty by the seller that the preserves in such container or to which the statement relates are of the description or weight indicated in the statement. [911]

13.—(1) Every person who sells heather honey or any specified brand of honey otherwise than by retail shall furnish to the buyer, on or before the delivery of the honey, a statement in writing clearly stating that such honey is heather honey or (as the case may be) a specified brand of honey.

(2) Every person who sells fruit curd or mincemeat in a container otherwise than by retail shall clearly indicate to the buyer, either by means of a label upon the container or on an invoice or similar document delivered to the buyer on or before the delivery of the fruit curd or mincemeat, whether such container is a No.  $\frac{1}{2}$  size or a No. 1 size or a No. 2 size container, or, in the case of any other container, what is the net weight contained therein. [912]

14. In any proceedings under this Order in respect of an alleged deficiency of weight of any preserves (otherwise than on a sale by retail of loose preserves) the Court shall disregard any deficiency in the weight of the preserves contained in a single container if such deficiency does not exceed  $\frac{1}{2}$  oz. for each purported 1 lb. of preserves, provided that in all the circumstances of the case the Court is satisfied that the deficiency is due to some cause which could not reasonably be avoided, including, in particular, variation in the weight arising in the process of packing or from evaporation after packing; and for this purpose the Court may have regard to the average weight of preserves contained in a reasonable number of any containers of the same kind, and containing the same description of preserves, sold or delivered by the person charged, or in his possession for the purpose of sale or delivery, on the same occasion. [913]

15.—(1) In any proceedings in respect of an infringement of this Order, the production by one of the parties of (i) a document purporting to be a certificate of a public analyst or the Government Chemist, or (ii) a document supplied to him by the other party as being a copy of such a certificate, shall be sufficient evidence of the facts stated therein; unless in the case mentioned under (i) above the other party requires that the person making the analysis shall be called as a witness.

(2) In any such proceedings—

(a) if the prosecution intends to produce a certificate of a public analyst or the Government Chemist, a copy of such certificate shall be served with the summons; and

(b) if a defendant intends to produce a certificate of a public analyst or the Government Chemist, or to require that the person making the analysis shall be called as a witness, he shall give to the other party at least three clear days' notice of his intention;

and if any of these requirements is not complied with the Court may, if it thinks fit, adjourn the hearing on such terms as it deems proper.

(3) In this Article, "public analyst" has in relation to England and Wales the meaning assigned to it by the Food and Drugs Act, 1938; in relation to Scotland the meaning assigned to it by the Food and Drugs (Adulteration) Act, 1928; and in relation to Northern Ireland the meaning assigned to it by the Sale of Food and Drugs Acts (Northern Ireland), 1875 to 1939. [914]

16. The provisions of this Order shall not apply to the sale of any preserves served as part of a meal by a caterer in the course of his catering business. [915]

17.—(1) The provisions of this Order are subject to any directions that may at any time be given by or on behalf of the Minister, and to any licence or authorisation that may be granted by or on behalf of the Minister under this Order.

(2) Every person holding a licence or authorisation granted under this Order shall comply with every condition imposed by such licence or authorisation.

(3) Every licence or authorisation granted under this Order is and shall remain the property of the Minister; and the licensee or any person in possession of any such licence or authorisation shall, if requested to do so by or on behalf of the Minister, produce or deliver it to such person or to a person of such class or description, and within such time, as may be specified in the request. [916]

18. Infringements of this Order are offences against the Defence (General) Regulations, 1939. [917]

19. No person shall, in connection with the sale or disposition or proposed sale or disposition of any preserves, enter or offer to enter into any artificial transaction or make or demand any unreasonable charge. [918]

20.—(1) The Preserves Order, 1944, as amended, is hereby revoked, but without prejudice to any proceedings in respect of any contravention thereof.

(2) Any licence or authorisation granted under the said Order and subsisting at the date of the coming into force of this Order shall continue to have effect as if granted under this Order.

(3) Every person shall, notwithstanding the revocation of the said Order, retain any record required to be kept by him thereunder for one year from the date of the transaction or delivery to which it relates. [919]

21. This Order shall come into force on the 20th day of July, 1947, and may be cited as the Preserves Order, 1947. [920]

\* \* \* \* \*

### THE FIRST SCHEDULE

JAM MANUFACTURED IN THE UNITED KINGDOM FOR WHICH NO MAXIMUM  
PRICES ARE PRESCRIBED

#### *Description of Jam*

Bilberry	Plum
Blackberry (or Bramble)	Plum and blackcurrant
Blackberry (or Bramble) jelly	Plum and raspberry
Blackberry and apple	Plum and strawberry
Cherry	Quince jelly
Damson	Redcurrant jelly
Greengage	Rhubarb
Loganberry	Rhubarb and raspberry [921]

*Note.*—For a new Schedule substituted for Sched. I, *supra*, see p. 297, *post*.



**THE SECOND SCHEDULE**  
**PART I**  
**MAXIMUM PRICES OF JAM MANUFACTURED IN THE UNITED KINGDOM**

Group	Description of Jam	Maximum First Hand Price						Maximum Wholesale Price						Maximum Retail Price					
		Rate per dozen containers each containing—						Per cwt. net in 7-lb. return-able con- tain- ers	Per cwt. net in 7-lb. cans	Rate per dozen containers each containing—						Per cwt. net in 7-lb. return-able con- tain- ers	Per cwt. net in 7-lb. cans		
		Rate per dozen containers each containing—			7 lb. (re- turn- able con- tain- ers)	7 lb. (cans)	Rate per dozen containers each containing—			7 lb. (re- turn- able con- tain- ers)	7 lb. (cans)								
		½ lb.	1 lb.	2 lb.			½ lb.					1 lb.	2 lb.	½ lb.	1 lb.			2 lb.	
I	Strawberry ...	s. d. 3 15	s. d. 3 20	s. d. 4 94	s. d. 6 99	s. d. 126 0	s. d. 8 7	s. d. 16 2	s. d. 31 3	s. d. 101 3	s. d. 105 9	s. d. 135 0	s. d. 141 0	s. d. 3 0	s. d. 9 10	s. d. 10 2½			
II	Apricot ...	7 4	13 8	26 4	84 4	88 6	112 0	118 0	14 9	28 6	91 7	122 1	128 1	9 1	5 2	8 11			
III	Blackcurrant jelly ...	7 0	13 0	25 0	73 4	83 10	105 9	111 9	14 3	27 6	88 1	92 7	117 5	9 1	4½	8 8			
IV	Apricot and pineapple ...	6 11	12 10	24 8	78 2	82 8	104 3	110 3	13 10	26 8	85 2	89 8	113 7	8½	1 4	2 7			
V	Strawberry and gooseberry ...	6 10	12 7	24 2	70 5	80 11	101 11	107 11	13 9	26 6	84 7	89 1	112 9	8½	1 4	2 7			
VI	Apricot and peach ...	6 0	12 6	24 0	75 10	80 4	101 1	107 1	13 8	26 4	84 0	88 6	112 0	8½	1 4	2 7			
VII	Blackcurrant ...	6 9	12 6	24 0	75 10	80 4	101 1	107 1	13 8	26 4	84 0	88 6	112 0	8½	1 4	2 7			
	Pineapple ...	6 7	12 2	23 4	73 6	78 0	98 0	104 0	13 4	25 7	81 5	85 11	108 7	8 1	3½	2 6			
VIII	Raspberry and Loganberry ...	6 7	12 2	23 4	73 6	78 0	98 0	104 0	13 4	25 7	81 5	85 11	108 7	8 1	3½	2 6			
	Raspberry and gooseberry ...	6 4	11 8	22 4	70 0	74 6	93 4	99 4	12 7	24 1	76 2	80 8	101 7	7½	1 2½	2 4			
IX	Raspberry and redcurrant ...	6 4	11 8	22 4	70 0	74 6	93 4	99 4	12 7	24 1	76 2	80 8	101 7	7½	1 2½	2 4			
	Apple and raspberry ...	6 4	11 7	22 2	69 5	73 11	92 7	98 7	12 6	23 11	75 7	80 1	100 8	7½	1 2½	2 4			
X	Gooseberry ...	6 4	11 7	22 2	69 5	73 11	92 7	98 7	12 6	23 11	75 7	80 1	100 8	7½	1 2½	2 4			
	Peach with citrus fruit ...	6 4	11 7	22 2	69 5	73 11	92 7	98 7	12 6	23 11	75 7	80 1	100 8	7½	1 2½	2 4			
XI	Apple and blackcurrant ...	6 2	11 5	21 10	68 3	72 9	91 0	97 0	12 5	23 10	75 3	79 9	100 4	7½	1 2½	2 4			
	Apple and strawberry ...	6 2	11 5	21 10	68 3	72 9	91 0	97 0	12 5	23 10	75 3	79 9	100 4	7½	1 2½	2 4			
XII	Peach ...	5 10	10 8	20 4	63 0	67 6	84 0	90 0	11 7	22 2	69 5	73 11	92 7	7 1	1½	2 2			
	Apple and loganberry ...	5 10	10 8	20 4	63 0	67 6	84 0	90 0	11 7	22 2	69 5	73 11	92 7	7 1	1½	2 2			
XIII	Special standard marmalade other than grapefruit mar- malade ...	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—			
	Apple jelly ...	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—			
XIV	Apple and damson ...	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—			
	Apple and plum ...	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—			
XV	Marmalade ...	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—			
	Any jam other than those specified in this part of this Schedule or in the First Schedule ...	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—			
XVI	Special standard grapefruit marmalade	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—			
	Special standard grapefruit marmalade	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—			

1. Loose Jam. The retail prices specified above shall not apply to the sale by retail of loose jam. The maximum price for such jam shall be—  
(a) when sold in quantities of 8 ounces or less, a price at the rate of one penny per ounce; and  
(b) when sold in quantities of over 8 ounces, a price at a rate per lb. calculated by reference to the retail price specified above for jam in a returnable container containing 7 lb.
2. Jam. Packed in Multiples of 7 lb. The maximum price, on the sale of jam in a container containing any multiple of 7 lb., shall be a price at a rate per lb. calculated by reference to the price applicable on such sale to jam in a container containing 7 lb.

[922]

PART II  
MAXIMUM PRICES OF FRUIT CURD AND MINCEMEAT

	Maximum First Hand Price			Maximum Wholesale Price			Maximum Retail Price		
	Per dozen containers of—			Per dozen containers of—			Per container of—		
	No. 1 size	No. 2 size	When sold loose or in containers containing 2 lb. net or more; rate per cwt.	No. 1 size	No. 2 size	When sold loose or in containers containing 2 lb. net or more; rate per cwt.	No. 1 size	No. 2 size	When sold loose or in containers containing 2 lb. net or more; rate per cwt.
Fruit curd	s. d. 6 4	s. d. 11 8	s. d. 94 11	s. d. 12 7	s. d. 23 10	s. d. 102 8	s. d. 8	s. d. 2 4	s. d. 122 8
Mince meat	5 10	10 8	86 6	11 7	22 2	93 9	7½	2 2½	110 0

*Note.*—For a new Part II of this Schedule substituted for Part II, *supra*, see p. 298, *post*.

[1923]

## PART III

## PROVISIONS RELATING TO MAXIMUM PRICES OF JAM MANUFACTURED IN THE UNITED KINGDOM AND OF FRUIT CURD AND MINCEMEAT

*Packing and Containers*

1. Subject as hereinafter provided, the maximum prices include all costs in respect of packing and of the provision of packages or containers, and no additional charge may be made by the seller in respect thereof; provided that—

- (a) on a sale of jam in a returnable container containing 7 lb. or any multiple of 7 lb., the seller may charge a sum by way of deposit as security for the return thereof not exceeding 9d. in the case of a container containing 7 lb. and not exceeding 1s. 6d. in the case of a container containing 14 lb. or more;
- (b) on a sale of fruit curd or mincemeat in a returnable container containing 6 lb. or more, the seller may charge a sum by way of deposit as security for the return thereof not exceeding 9d. in the case of a container containing 6 lb. or more but less than 12 lb. and not exceeding 1s. 6d. in the case of a container containing 12 lb. or more;
- (c) on a first-hand sale or sale by wholesale of jam, fruit curd or mincemeat, the seller may charge a reasonable sum by way of deposit in respect of any returnable package as security for its return, provided that the sum so charged shall be repaid by the seller to the buyer on the re-delivery of the package to the seller, carriage paid, in such condition as is reasonable having regard to its condition when supplied and to ordinary wear and tear; and
- (d) on a sale by retail of loose jam, fruit curd or mincemeat where the seller provides a container, a reasonable additional charge may be made for such container.

*Transport and Delivery*

2. The maximum prices on a first-hand sale or sale by wholesale include all costs and charges of and incidental to delivery by the seller at the buyer's premises, and no additional charge shall be made by the seller in respect of transport or delivery;

Provided that—

- (a) where the buyer's premises at which delivery is made are situate on the mainland of Scotland north of the Caledonian Canal, or on any of the Islands of the West of Scotland other than those of the Firth of Clyde, or in the counties of Orkney or Zetland, an additional charge may be made by the seller not exceeding a sum calculated at the appropriate rate specified in paragraph 5 of this Part of this Schedule;
  - (b) where delivery is made to the buyer at a point nearer to the seller's premises than the buyer's premises (including any place where the goods are stored or kept on the seller's behalf), the maximum price shall be reduced by an amount which fairly represents the difference between the cost of delivery to the buyer's premises and the cost of delivery to the place at which delivery is actually made.
3. On a sale of jam by a retailer in any of the areas of Scotland referred to in paragraph 2 hereof, there may be added to the maximum retail prices specified in Part I of this Schedule an amount not exceeding a sum calculated at the appropriate rate specified in paragraph 5 of this Part of this Schedule.

*Fractions of a Farthing*

4. Where the maximum price on a sale by retail includes any fraction of a farthing such fraction shall be regarded as one farthing.

*Rates*

5. The rates referred to in paragraphs 2 (a) and 3 above—

Jam	..	..	..	..	..	$\frac{1}{2}$ d. per lb. net.
Fruit curd	}	..	..	..	..	$\frac{1}{2}$ d. per No. $\frac{1}{2}$ or No. 1 size container
or		..	..	..	..	1d. per No. 2 size container
Mincemeat		..	..	..	..	$\frac{1}{2}$ d. per lb. net in any other case. [924]

## THE THIRD SCHEDULE

## PART I—MAXIMUM PRICES OF IMPORTED JAM

SECTION A.—*Maximum Prices on a First-Hand Sale*

Description of Jam	Rate per dozen cans each containing—			
	12 oz.	1 lb.	1½ lb.	2 lb.
	s. d.	s. d.	s. d.	s. d.
1. Cape gooseberry .. .. .	9 8½	11 1	17 0	21 6½
Apricot .. .. .				
2. Green fig .. .. .	8 10½	10 3½	15 3½	19 10
3. Strawberry .. .. .	10 6½	12 0	17 10½	22 4½
4. Raspberry .. .. .	8 10½	10 3	14 5	19 0
Loganberry .. .. .				
Pineapple .. .. .				
Peach .. .. .				
Peach and pineapple .. .. .	8 10	11 2	16 1½	20 8½
5. Blackcurrant .. .. .	8 0	9 5½	13 7	17 3½
6. Marmalade .. .. .				
All other jams .. .. .				

SECTION B.—*Maximum Prices on a Sale by Wholesale*

Description of Jam	Rate per dozen cans each containing—			
	12 oz.	1 lb.	1½ lb.	2 lb.
	s. d.	s. d.	s. d.	s. d.
1. Cape gooseberry .. .. .	10 2½	11 10	17 10½	22 11½
Apricot .. .. .				
2. Green fig .. .. .	9 4½	11 0½	16 2	21 3
3. Strawberry .. .. .	11 0½	12 9	18 9	23 9½
4. Raspberry .. .. .	9 4½	11 0	15 3½	20 5
Loganberry .. .. .				
Pineapple .. .. .				
Peach .. .. .				
Peach and pineapple .. .. .	9 4	11 11	17 0	22 1½
5. Blackcurrant .. .. .	8 6	10 2½	14 5½	18 8½
6. Marmalade .. .. .				
All other jams .. .. .				

SECTION C.—*Maximum Prices on a Sale by Retail*

Description of Jam	Rate per can containing—			
	12 oz.	1 lb.	1½ lb.	2 lb.
	s. d.	s. d.	s. d.	s. d.
1. Cape Gooseberry .. .. .	1 0	1 2	1 9	2 3
Apricot .. .. .				
2. Green fig .. .. .	11	1 1	1 7	2 1
3. Strawberry .. .. .	1 1	1 3	1 10	2 4
4. Raspberry .. .. .	11	1 1	1 6	2 0
Loganberry .. .. .				
Pineapple .. .. .				
Peach .. .. .				
Peach and pineapple .. .. .	11	1 2	1 8	2 2
5. Blackcurrant .. .. .	10	1 0	1 5	1 10
6. Marmalade .. .. .				
All other jams .. .. .				

*Loose Jam*

The retail prices specified above shall not apply to the sale by retail of loose jam. The maximum price for loose jam shall be—

- (a) when sold in quantities of 8 ounces or less, a price at the rate of one penny per ounce ; and
- (b) when sold in quantities of over 8 ounces, a price at the rate per lb. calculated by reference to the retail price specified above for jam in a can containing 2 lb. [925]

## PART II

## PROVISIONS RELATING TO THE MAXIMUM PRICES OF IMPORTED JAM

*Packing and Containers*

1. The maximum prices include all costs in respect of packing and of the provision of packages or containers, and no additional charge shall be made by the seller in respect thereof.

*Transport and Delivery*

2. The maximum prices on a first-hand sale or a sale by wholesale include all costs and charges of and incidental to delivery at the buyer's premises, and no additional charge shall be made in respect of transport or delivery ;

Provided that—

- (a) where the buyer's premises at which delivery is made are situate on the mainland of Scotland north of the Caledonian Canal, or on any of the Islands of the West of Scotland other than those of the Firth of Clyde, or in the counties of Orkney or Zetland, an additional charge may be made by the seller at a rate not exceeding  $\frac{1}{2}$ d. per lb. net ;
  - (b) where delivery is made to the buyer at a point nearer to the seller's premises than the buyer's premises (including any place where the goods are stored or kept on the seller's behalf), the maximum price shall be reduced by an amount which fairly represents the difference between the cost of delivery to the buyer's premises [and the cost of delivery to the buyer's premises] and the cost of delivery to the place at which delivery is actually made ; and
  - (c) where on a sale to a multiple retailer delivery is given at a central depot or warehouse from which distribution is ordinarily made by the buyer to not less than ten of his retail shops, the maximum price shall be reduced by a sum at the rate of 1s. per case.
3. On a sale by a retailer in any of the areas of Scotland referred to in subparagraph (a) of paragraph 2 hereof, there may be added to the prices specified in Section C of Part I of this Schedule a sum at a rate not exceeding  $\frac{1}{2}$ d. per lb. net.

*Breaking Bulk*

4. Where on a sale by wholesale part only of a case is sold or is at the buyer's request delivered to him, the maximum price in respect thereof may be increased by a sum at a rate not exceeding 1d. per dozen cans.

*Maximum Price of Imported Jam Packed in Unspecified Containers*

5. The maximum price on any sale of imported jam packed in containers of sizes other than those specified in Part I of this Schedule shall be a price at the rate per lb. calculated by reference to the price specified in relation to the sale of such jam packed in cans each containing 2 lb.

*Fractions of a Halfpenny*

6. Where the maximum price includes any fraction of a halfpenny such fraction shall be regarded as one halfpenny. [926]

*Note.*—The words in square brackets in paragraph 2, proviso (b), *supra*, would appear to be redundant.

## THE FOURTH SCHEDULE

## PART I—TABLE OF MAXIMUM PRICES

*Extracted Honey*

Description	On a first-hand sale		On a sale by wholesale		On a sale by retail		
	Rate per dozen containers each containing		Rate per dozen containers each containing		Per container containing		Containers containing more than 1 lb. rate per lb. net weight
	$\frac{1}{2}$ lb.	1 lb.	$\frac{1}{2}$ lb.	1 lb.	$\frac{1}{2}$ lb.	1 lb.	
Imported honey, other than specified brands of honey .. ..	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
	9 6	15 10	10 6	17 5	1 1	1 9 $\frac{1}{2}$	1 9 $\frac{1}{2}$
Imported specified brands of honey	9 11	16 7	10 11	18 3	1 1 $\frac{1}{2}$	1 10 $\frac{1}{2}$	1 10 $\frac{1}{2}$
Home - produced honey, other than heather honey	—	—	—	—	1 6	2 9	2 3
Home - produced heather honey	—	—	—	—	1 10	3 6	3 0

*Honey in the Honeycomb*

Description	On a sale by retail
	Rate per ounce net weight
Home-produced honey in the honeycomb, other than heather honey .. .. .	d.
	2
Home-produced heather honey in the honeycomb ..	2 $\frac{1}{2}$

[927]

## PART II—PROVISIONS RELATING TO MAXIMUM PRICES

*Honey in the Honeycomb*

1. In calculating the weight of honey in the honeycomb for the purposes of the table set out in Part I of this Schedule, the weight of the frame in which the section of honeycomb is contained may be included, provided that such frame is in all the circumstances of a reasonable weight.

*Transport and Delivery*

2. The maximum prices on a first-hand sale or on a sale by wholesale of imported honey include all costs and charges of and incidental to delivery by the seller at

the buyer's premises, and no additional charge shall be made by the seller on any such sale in respect of transport or delivery.

Provided that where delivery is made to the buyer at a point nearer to the seller's premises than the buyer's premises (including any place where the honey is stored or kept on the seller's behalf), the maximum price shall be reduced by an amount which fairly represents the difference between the cost of delivery to the buyer's premises and the cost of delivery to the place at which delivery is actually made.

#### *Packing and Containers*

3.—(1) On a first-hand sale or sale by wholesale of imported honey, the seller may charge a reasonable sum by way of deposit in respect of any returnable package as security for the return thereof, provided that the sum so charged shall be repaid by the seller to the buyer on the re-delivery of the package to the seller, carriage paid, in such condition as is reasonable having regard to its condition when supplied and to ordinary wear and tear.

(2) Except as provided in this paragraph, no additional charge shall be made on the sale of honey in respect of packing or of packages or containers.

#### *Honey sold Loose or in Unspecified Containers*

4. Where honey of a description mentioned in Part I of this Schedule is sold otherwise than in a container specified therein, the maximum price on any sale thereof shall be calculated at the lowest rate per lb. chargeable on that sale for that description of honey when sold in any container specified in Part I of this Schedule. [928]

### EXPLANATORY NOTE

*(This Note is not part of the Order, but is intended to indicate its general purport.)*

*This Order replaces the Preserves Order, 1944, as amended.*

*Sixteen varieties of jam manufactured in the United Kingdom are freed from price control.*

*New maximum prices are prescribed for the remaining varieties of jam and marmalade manufactured in the United Kingdom. In the case of jam or marmalade sold in 7-lb. containers, higher maximum prices are prescribed if the containers are not returnable.*

*The labelling provisions of the Order now apply to all imported honey, whether of a "specified brand" or not.*

*The definition of "jam" has been slightly altered.*

## PRESERVES (AMENDMENT) ORDER, 1947

*S. R. & O., 1947, No. 2033*

*September 20, 1947*

In exercise of the powers conferred upon him by Regulations 55 and 55AB of the Defence (General) Regulations, 1939, as having effect by virtue of the Supplies and Services (Transitional Powers) Act, 1945, as extended by the Supplies and Services (Extended Purposes) Act, 1947, and of all other powers him enabling, the Minister of Food hereby makes the following Order :—

1. The Preserves Order, 1947, shall be amended as follows :—

(a) by substituting for the First Schedule thereto the First Schedule to this Order; and

(b) by substituting for Part II of the Second Schedule thereto the Second Schedule to this Order. [929]



2. This Order may be cited as the Preserves (Amendment) Order, 1947, and shall come into force on the 12th day of October, 1947. [930]

\* \* \* \*

### THE FIRST SCHEDULE

(*To be substituted for the First Schedule to the Preserves Order, 1947*)

### THE FIRST SCHEDULE

JAM MANUFACTURED IN THE UNITED KINGDOM FOR WHICH NO  
MAXIMUM PRICES ARE PRESCRIBED

#### *Description of Jam*

Apple and blackcurrant	Damson
Apple and damson	Greengage
Apple and loganberry	Loganberry
Apple and plum	Plum
Apple and raspberry	Plum and blackcurrant
Apple and strawberry	Plum and raspberry
Apple jelly	Plum and strawberry
Bilberry	Quince jelly
Blackberry and apple	Redcurrant jelly
Blackberry (or Bramble)	Rhubarb
Blackberry (or Bramble) jelly	Rhubarb and raspberry
Cherry	

[931]

*Note.*—For Sched. I to the Preserves Order, 1947, as originally made, see p. 289, *ante*.

**THE SECOND SCHEDULE**  
(To be substituted for Part II of the Second Schedule to the Preserves Order, 1947)

**PART II**  
**MAXIMUM PRICES OF FRUIT CURD AND MINCEMEAT**

	Maximum First-Hand Price						Maximum Wholesale Price						Maximum Retail Price					
	Per dozen containers of—			When sold loose or in re- turnable cans containing 2 lb. net ; or more ; rate per cwt.	When sold loose or in re- turnable cans containing 7 lb. net ; rate per cwt.	When sold in cans containing 2 lb. net ; or more ; rate per cwt.	Per dozen containers of—			When sold loose or in re- turnable cans containing 2 lb. net ; or more ; rate per cwt.	When sold in cans containing 7 lb. net ; rate per cwt.	Per container of—			When sold loose or in re- turnable cans containing 2 lb. net ; or more ; rate per cwt.	When sold in cans containing 7 lb. net ; rate per cwt.		
	No. 1 size	No. 2 size	No. 3 size				No. 1 size	No. 2 size	No. 3 size			No. 1 size	No. 2 size	No. 3 size				
																	s. d.	s. d.
fruit Curd	6 7	12 2	23 2	s. d. 97 3	s. d. 103 3		7 0½	13 1	24 10	s. d. 105 0	s. d. 111 0		8½	1 3½	2 5	s. d. 124 7	s. d. 130 7	
mincemeat	7 3	13 6	25 10	109 8	115 8		7 9	14 6	27 8	118 3	124 3		9	1 5	2 8	138 5	144 5	

*Note.*—For Sched. II, Part II, to the Preserves Order, 1947, as originally made, see p. 291, ante.

[332]

**EXPLANATORY NOTE**

(This Note is not part of the Order, but is intended to indicate its general purport.)

*This amending Order :—*

- (1) frees seven more varieties (all containing apple) of jam manufactured in the United Kingdom from price-control ; and
- (2) raises the maximum prices of fruit curd and mincemeat, and prescribes maximum prices for fruit curd and mincemeat sold in 7-lb. cans.

## GAS

ORDERS, CIRCULARS AND MEMORANDA :—	PAGE	CASES :—	PAGE
Gas Fund (Contribution) Order, 1947	299	Newcastle-under-Lyme Corp'n. v. Wolstanton, Ltd., [1947] 1 All E. R. 218	299

## ORDERS, CIRCULARS AND MEMORANDA

## GAS FUND (CONTRIBUTION) ORDER, 1947

*S. R. & O., 1947, No. 20**January 2, 1947*

The Minister of Fuel and Power in pursuance of the powers conferred upon him by Section 7 of the Gas Regulation Act, 1920, as amended by the Gas Undertakings Act, 1934, hereby prescribes as follows :—

1. The rate of contribution to the Gas Fund for the year 1947 shall be :—

- (a) eight pence for each five thousand therms in the form of gas sold during the year 1946 (excluding gas sold to other undertakers in bulk for distribution and gas supplied separately for industrial purposes only); and
- (b) four pence for each five thousand therms in the form of gas supplied separately for industrial purposes only during the year 1946.

[933]

2. Such contribution shall be paid on or before the 1st April, 1947, to the Minister of Fuel and Power at Heyhouses Lane, Lytham St. Annes, Lancashire, by all Gas Undertakers with respect to whom an Order under the Gas Regulation Act, 1920, shall have been made or to whom subsection (3) of section 7 of that Act applies by virtue of any public general Act, special Act or Special Order. [934]

3. Payment of the contribution shall be by cheque made payable to the Minister of Fuel and Power and crossed "Bank of England". [935]

4. This Order may be cited as the Gas Fund (Contribution) Order, 1947. [936]

\* \* \* \* \*

## CASES

*Gas—Local authority owning gas pipes laid under public highways by virtue of statutory powers—Right to subjacent support—Damage to pipes from subsidence of surface land caused by mining operations—Right of authority to damages—Gasworks Clauses Act, 1847 (c. 15), s. 6—Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883 (c. 37), s. 4.*

Newcastle-under-Lyme corporation were the gas undertakers for the area covered by their borough, and their gas mains had been laid pursuant to successive local Acts embodying s. 6 of the Gasworks Clauses Act, 1847, which provides: "The undertakers . . . may open and break up the soil and pavement of the several streets and bridges within the limits of the special Act . . . and lay down and place within the same limits, pipes, conduits, service pipes and other works . . . and they may . . . do all

other acts which the undertakers shall from time to time deem necessary for supplying gas to the inhabitants of the district included within the said limits. . . ." The defendant company mined certain seams of iron and coal and in the course of their workings let down the surface of the soil and damaged some of the corporation's gas mains. In an action by the corporation against the defendant company for damages in respect of the said damage :—

*Held* : (i) s. 6 of the Gasworks Clauses Act, 1847, did not confer on the corporation any legal or equitable right in the soil which surrounded the gas mains, but only a right to possession of the gas mains and the cavity filled by them.

(ii) the corporation never acquired any right of support against the defendant company except the implied right arising from the exercise of the corporation's statutory privilege and founded on the principle that when the legislature gives power to do something the execution of which requires subjacent support from land the persons who do the act acquire such a right to support as against the landowner : see *Normanton Gas. Co. v. Pope and Pearson, Ltd.* (1883), 52 L. J. Q. B. 629, but that implied right was swept away by s. 4 of the Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883, and the corporation had no right to support for their gas mains whether laid before or after 1883.

(iii) the corporation had failed to prove that, at the passing of the Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883, no compensation was recoverable in respect of the right to support of pipes laid before 1883, and so had not satisfied the condition for the preservation of such right in the second part of s. 5 of the Act.

(iv) there was nothing in s. 4 of the Act of 1883 which limited the operation of that section to land within 40 yards from the gas mains, and, therefore, there would be an implied right to support as regards land outside that limit.

*Decision of EVERSHED, J.* ([1946] 2 All E. R. 447), *reversed*.—*NEWCASTLE-UNDER-LYME CORPN. v. WOLSTANTON, LTD.*, [1947] Ch. 427 ; [1947] 1 All E. R. 218 ; 176 L. T. 242 ; 111 J. P. 102 ; 63 T. L. R. 162 ; 91 Sol. Jo. 84 ; 45 L. G. R. 221, C. A. [937]

## HARBOURS, DOCKS AND WHARVES

STATUTES :—	PAGE		PAGE
Transport Act, 1947, ss. 66-71 and 125	300	Mersey Docks and Harbour Board (Resumption of Elections) Order, 1947	312
ORDERS, CIRCULARS AND MEMORANDA :—		Dundee Harbour Trustees (Resumption of Elections) Order, 1947	313
Newport Harbour Commissioners (Resumption of Elections) Order, 1947	310		

## STATUTES

### TRANSPORT ACT, 1947

(10 & 11 Geo. 6, c. 49)

### PRELIMINARY NOTE

Part IV of the Transport Act, 1947, which Part came into operation on August 6, 1947, the date of the Royal Assent, deals, *inter alia*, with harbours and coastal

shipping. The British Transport Commission, whose general duties include the provision of an efficient, adequate, economical and properly integrated system of public inland transport and port facilities, is empowered, and where the Minister of Transport so directs, required, to prepare schemes for securing the development, maintenance or management of any trade harbour in Great Britain, as defined in s. 66 (1), or of any group of such trade harbours (s. 66 (3)). In the preparation of schemes the Commission is to consult with persons carrying on harbour undertakings in the harbour or group of harbours. In order to allow different schemes to be made to meet the needs of different harbours, the provisions governing the contents of schemes are drawn in wide, and for the most part, permissive terms.

Among the matters with which a scheme may deal are (a) the body which is to provide port facilities under the scheme (which body may be the Commission itself); (b) the transfer of harbour undertakings to such body; (c) the port facilities which are to be provided by any such body as above; and (d) the application to the harbour or any of the harbours of the provisions of s. 67, which relates to the licensing of port facilities. Private dock undertakings, however, may not be brought compulsorily within the ambit of a scheme except where they are carried on under a private Act or order having equivalent effect (s. 66 (7)). Further, subject to the provisions of s. 67, a scheme may not provide for conferring an exclusive right to provide specified port facilities such as berthing, unloading and lighterage (s. 66 (6)).

When s. 67 is applied to a harbour, save in so far as the scheme otherwise provides, no port facilities may be provided therein except under licence from the licensing authority constituted or specified under the scheme. Licences are, normally, to be freely granted and to last for at least seven years; persons aggrieved by determinations of the licensing authority have a right of appeal to the Transport Tribunal. Persons who were carrying on an undertaking providing port facilities on November 28, 1946, are further protected by the fact that where the refusal or revocation of a licence will involve substantial interference with some activity regularly carried on by them before and since that date, the Tribunal may declare that the undertaking is to be transferred to the licensing authority or other body administering the scheme (s. 68 (1)). If within a period of six months no agreement has been reached between the parties for the transfer of the undertaking, the Minister may give effect thereto by order, which order is to include provisions for compensation as laid down in s. 68 (3).

By s. 66 (8), no scheme will have effect until embodied in an order made by the Minister in accordance with Sched. VIII (the text of which is included in the title ROAD TRAFFIC, *post*). This Schedule prohibits the Minister from approving a scheme which provides for the transfer of an undertaking unless it makes satisfactory provision for compensation, which in the case of a transfer from a local authority is to be compensation identical, as nearly as may be, with that provided by s. 25 (the text of which is included in the title ROAD TRAFFIC, *post*) for transfers from local authorities under Part II of the Act. Such a transfer will also attract the additional compensation, designed to cover severance and increase of overhead expenses, provided for local authorities by s. 114 (the text of which is included in the title ROAD TRAFFIC, *post*).

Sched. VIII also deals with the preparation of draft orders, the publication of notices thereof and the making of objections thereto. When objection is duly made and not withdrawn the Minister is to hold a public local inquiry and may, after considering the report of the person holding the inquiry, make the order in terms of the draft, with or without amendment. When an objection after being duly made is not withdrawn before the order is made, the order will be subject to the special parliamentary procedure laid down by the Statutory Orders (Special Procedure) Act, 1945 (38 Halsbury's Statutes 439).

The Commission is empowered to make working agreements with coastal shipping interests for the co-ordination of their activities with those of the Commission (s. 70). A Coastal Shipping Advisory Committee is to be established by the Minister to consider and report on all matters referred to them jointly affecting the Commission and coastal shipping interests (s. 71). [938]

## ARRANGEMENT OF SECTIONS

\* \* \* \* \*

## PART IV

## OTHER FORMS OF TRANSPORT AND PORT FACILITIES

*Harbours*

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67. Power to license provision of port facilities .. .. .	306
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*Coastal Shipping*

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71. Advisory Committee as to coastal shipping .. .. .	309

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## PART IX

## MISCELLANEOUS AND GENERAL

\* \* \* \* \*

125. Interpretation .. .. .	309
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*An Act to provide for the establishment of a British Transport Commission concerned with transport and certain other related matters, to specify their powers and duties, to provide for the transfer to them of undertakings, parts of undertakings, property, rights, obligations and liabilities, to amend the law relating to transport, inland waterways, harbours and port facilities, to make certain consequential provision as to income tax, to make provision as to pensions and gratuities in the case of certain persons who become officers of the Minister of Transport, and for purposes connected with the matters aforesaid. [939]*

[6th August, 1947.]

\* \* \* \* \*

## PART IV

## OTHER FORMS OF TRANSPORT AND PORT FACILITIES

\* \* \* \* \*

*Harbours*

**66. Schemes as to harbours.**—(1) The harbours to which this section applies (hereafter in this section referred to as "trade harbours") are all harbours in Great Britain which are, or form part of, or abut on, harbours not normally used only by pleasure steamers, yachts, fishing vessels and vessels not required to be registered under the Merchant Shipping Acts, 1894 to 1940 :

Provided that this section shall not apply to any harbour which is or forms part of a dockyard port within the meaning of the Dockyard Ports Regulation Act, 1865. [940]

(2) The Commission shall keep the trade harbours under review with a view to determining whether the powers conferred on them by this section should be exercised with respect to any trade harbour or group of trade harbours. [941]

(3) The Commission may, with a view to securing the efficient and economical development, maintenance or management of any trade harbour or group of trade harbours, prepare, in consultation with the persons theretofore carrying on harbour undertakings in or in connection with the harbour or group of harbours and with such bodies or persons as the Commission may consider to be properly representative of shipping and traders actually using, and of workers actually employed in, the harbour or group of harbours, and submit to the Minister a scheme providing for all or any of the following matters, that is to say—

- (a) for constituting or specifying the body or bodies who are to provide port facilities under the scheme in or in connection with the harbour or group of harbours, and the body or bodies who are to administer, or take part in administering, the scheme ;
- (b) for the transfer to any such body as aforesaid of any harbour undertaking carried on in or in connection with the harbour or group of harbours ;
- (c) for regulating the relations of persons carrying on harbour undertakings in or in connection with the harbour or group of harbours, and, in particular, for the pooling by those persons of receipts or expenses ;
- (d) for specifying the port facilities which are to be provided by any such body as is mentioned in paragraph (a) of this subsection in or in connection with the harbour or group of harbours ;
- (e) for prohibiting or restricting the construction, improvement or extension of any dock in the harbour or group of harbours otherwise than under the scheme ;
- (f) for applying the next succeeding section to the harbour or any of the harbours and declaring the authority which is to be the licensing authority for the purposes thereof ;
- (g) for incorporating, with or without modifications, in relation to any such body as is mentioned in paragraph (a) of this subsection, any of the provisions of this Act relating to borrowing or the issue of stock, including the provisions thereof relating to guarantees by the Treasury ;
- (h) for incorporating, with or without modifications, in relation to any such body as is mentioned in paragraph (a) of this subsection, being a body who are to provide port facilities in or in connection with the harbour or group of harbours—
  - (i) any of the provisions of Part V of this Act or of any scheme or regulations made thereunder ; or
  - (ii) any other statutory provisions relating to or affecting the charges to be made by the Commission or the terms and conditions applicable to the Commission, whether for or in relation to the provision of port facilities or not ;
- (i) for incorporating, with or without modifications, in relation to any such transfer as is mentioned in paragraph (b) of this subsection, any of the provisions of this Act relating to the transfer of undertakings or parts of undertakings to the Commission, including provisions relating to compensation ;
- (j) for repealing or amending any previous scheme in force with respect to the harbour or group of harbours, or any part thereof ; and
- (k) for making such other consequential or incidental provision as appears necessary or expedient for any of the purposes aforesaid, including provision for repealing or amending any statutory provision of local application affecting the harbour or group of harbours. [942]



(4) The Commission may be the body specified, or one of the bodies specified, in a provision included in a scheme by virtue of paragraph (a) of the last preceding subsection, and a part of the undertaking of the Commission may be the subject of a transfer under a provision included in a scheme by virtue of paragraph (b) of the last preceding subsection. [943]

(5) The Commission, in preparing a scheme under this section, shall have regard to the desirability—

(a) of including among the members of any body (other than the Commission) constituted or specified in a provision included in the scheme by virtue of paragraph (a) of subsection (3) of this section to administer or take part in administering the scheme persons, or representatives of persons, who are payers of dues for the services or facilities afforded in, or who are otherwise interested in the trade or activities of, the harbour or group of harbours to which the scheme relates; and

(b) of providing for the scheme to be administered, as far as may be, from a place at or in the vicinity of the harbour, or one of the harbours in the group of harbours, to which the scheme relates. [944]

(6) Subject to the provisions of subsection (3) of this section relating to the application to harbours of the next succeeding section, nothing in the said subsection (3) shall be construed as authorising the inclusion in any scheme of any provision which confers upon any such body as is mentioned in paragraph (a) of that subsection the exclusive right to carry on or in any part of any harbour a business the activities of which consist of or include all or any of the following activities, that is to say, the berthing, towing, moving or drydocking of ships, the loading or unloading of goods or embarking or disembarking of passengers or the lighterage or the sorting, weighing, warehousing or handling of goods:

Provided that nothing in this subsection shall apply to any exclusive right exercisable immediately before the operation of the scheme by any person, whether by virtue of any statutory provision or by virtue of any right of property, being a right exercisable for the purposes of an undertaking or part of an undertaking transferred to the body under the scheme. [945]

(7) No provision of any scheme made under this section shall apply to any private dock undertaking, oil dock undertaking, coal dock undertaking or drydock undertaking, unless either the person carrying on the undertaking consents to the application thereof or the undertaking is carried on in pursuance of some private Act or some order having the effect of an Act. [946]

(8) A scheme under this section shall not have effect until embodied in an order made by the Minister in accordance with the provisions of the Eighth Schedule to this Act, and the date on which it takes effect shall be such date as may be specified in the order:

Provided that where objection is made in accordance with the said Schedule to the making of the order and is not withdrawn before the making thereof, the order shall be subject to special parliamentary procedure. [947]

(9) The Minister may—

(a) specify a trade harbour or group of trade harbours, and

(b) direct the Commission to prepare and submit a scheme under this section with respect to the trade harbour or group of trade harbours so specified,

and the Commission shall give effect to any such directions.

(10) In this section, the following expressions have the meanings hereby assigned to them, that is to say:—

"harbour undertaking" means an undertaking or part of an undertaking the activities whereof consist wholly or mainly of the construction, improvement, maintenance, management, regulation, marking or lighting of a harbour or part of a harbour ;

"private dock undertaking" means an undertaking or part of an undertaking the activities whereof consist wholly or mainly of the construction, improvement, maintenance or management of a dock the use whereof is substantially confined to ships resorting thereto for the purpose, and only for the purpose, of bringing goods which are to be used by the person carrying on the undertaking or part of an undertaking in the manufacture or production, at premises on or near the dock, of goods, substances, electricity or power, or of receiving goods or substances manufactured or produced by that person on such premises ;

"oil dock undertaking" and "coal dock undertaking" mean an undertaking or part of an undertaking the activities whereof consist wholly or mainly of the construction, improvement, maintenance or management of a dock the use whereof is substantially confined to ships resorting thereto for the purpose, and only for the purpose, of bringing or receiving oil in bulk or, as the case may be, coal ;

"drydock undertaking" means an undertaking or part of an undertaking the activities whereof consist wholly or mainly of the construction, improvement, maintenance or management of a dock the use whereof is substantially confined to the cleaning or repairing of ships. [948]

*General note.*—It is the general duty of the British Transport Commission to provide or secure the provision of a properly integrated system of public inland transport and port facilities within Great Britain (s. 3 (1); see title ROAD TRAFFIC, *post*). The present section gives the Commission the necessary power to carry out this duty, so far as port facilities are concerned, by empowering them to make schemes for securing the efficient and economical development, maintenance or management of any trade harbour or group of harbours. See, generally, the Preliminary Note, *ante*.

The trade harbours in Great Britain number approximately 330, of which about 110 are operated under some form of public trust; about 70 are owned by municipal authorities; about 50, formerly owned by railway undertakings, were transferred on January 1, 1948, to the Commission; and about 100 are owned by other harbour undertakings. While the section provides for the making of schemes in regard only to trade harbours, the Minister of Transport stated during the course of the debate on the Second Reading of the Bill that the Commission would be expected to keep a watchful eye on the small ports and to assist them as far as possible (431 H. of C. Official Report 1632).

*Schemes and organisation.*—The provisions governing the contents of schemes are widely drawn so as to enable different schemes to be drawn up suitable to the widely differing requirements of the various harbours and groups of harbours. The Parliamentary Secretary to the Ministry of Transport stated at the Committee Stage of the Bill that while the Commission must be left free to prepare in any particular case the type of scheme which they considered most suitable, it was the Government's general intention that the ports should be run locally by some form of public trust. Financially, however, such trusts would not be completely autonomous, since it was considered essential that there should be some centralised financial responsibility. It was the intention of the Government that, whatever form of scheme was made, local experience and local knowledge should be used for the management of each port or each group of ports (H. of C. Official Report, S.C.B., February 12, 1947, cols. 147, 161).

That schemes will have due regard to local requirements is further assured by the provisions of sub-s. (5), *ante*, which was inserted as a result of a Government amendment on the Report stage in the House of Lords.

*Merchant Shipping Acts, 1890 to 1940.*—For the twenty-nine Acts comprising the Merchant Shipping Acts, 1890 to 1940, see 18 Halsbury's Statutes 162–828; 25 Halsbury's Statutes 634; 29 Halsbury's Statutes 795; 30 Halsbury's Statutes 810, 811; 31 Halsbury's Statutes 230; and 33 Halsbury's Statutes 473.

*Dockyard Ports Regulation Act, 1865.*—18 Halsbury's Statutes 128. S. 2 of that Act defines "dockyard port" as follows:—"The term 'dockyard port' means any port, harbour, haven, roadstead, sound, channel, creek, bay, or navigable river of the United Kingdom in, on, or near to which Her Majesty now or at any time hereafter has any dock, dockyard, steam factory yard, victualling yard, arsenal, wharf or mooring."

*The Commission.*—The British Transport Commission.

*Transfer of harbour undertaking.*—Where a scheme provides for the transfer of an undertaking previously carried on by a county council, the Common Council of the City of London, a county borough council or a county district council or by a joint committee, joint board, joint authority or other combined body all the members of which are, or are representative of, local authorities, the scheme must make provision for compensation identical as near as

may be with the provision made by s. 25 (see title ROAD TRAFFIC, *post*) in the case of transfers from local authorities under Part II of the Act (see Sched. VIII, Part I; title ROAD TRAFFIC, *post*).

In cases where the authority have, for the purposes of the transferred undertaking, raised money by the issue of securities or have advanced money for those purposes out of moneys held by them, s. 25 of the Act provides for the Commission taking over as from the date of transfer liability for the payment of amounts due in respect of the redemption of the loan or the repayment of the advance and the payment of interest thereon (see title ROAD TRAFFIC, *post*). There will be payable, in addition, in the case of a transfer from any of the above-mentioned local authorities, the appropriate sum as compensation under s. 114 (see title ROAD TRAFFIC, *post*). This sum, which is designed to cover compensation in respect of severance and increase of overhead expenses, will be such sum as may be specified in relation to the undertaking by regulations, it being provided that the total of all appropriate sums payable in respect of harbour undertakings is not to exceed £200,000 (see s. 114; title ROAD TRAFFIC, *post*). Where on the transfer of a local authority's undertaking to the British Transport Commission the Commission acquire any land held by that authority for the purposes of the undertaking, the local authority are entitled to a right of pre-emption in respect of the land for a period of ten years (see s. 115; title ROAD TRAFFIC, *post*).

*Provisions relating to borrowing, the issue of stock and Treasury guarantees.*—For the provisions of the Act relating to borrowing, the issue of stock and guarantees of stock by the Treasury, see respectively ss. 88, 89, 90; title ROAD TRAFFIC, *post*.

*Special parliamentary procedure.*—This is the procedure for the confirmation of orders laid down in the Statutory Orders (Special Procedure) Act, 1945 (38 Halsbury's Statutes 439).

*Directions.*—Powers of giving directions to the Commission in addition to that conferred by sub-s. (9), *ante*, are conferred on the Minister by s. 71 (4), *post*, and by ss. 4, 6 (8), 63 (4), 92 (2) (b), 94 (3), (7) and 102 (2), for which see title ROAD TRAFFIC, *post*.

*Definitions.*—For definitions of "charges," "dock," "harbour," "the Minister," "port facilities," "property," "ship" and "statutory provision," see s. 125 (1), *post*.

**67. Power to license provision of port facilities.**—(1) This section shall apply to harbours to which it is applied by a provision in that behalf contained in a scheme made under the last preceding section, and in this and the next succeeding section the expression "the harbour" means a harbour to which this section applies and the expression "the licensing authority" means such body as may be declared by the scheme to be the licensing authority for the purposes of this section. [949]

(2) Save so far as may be otherwise provided by the scheme, port facilities shall not be provided in or in connection with the harbour by any person except under and in accordance with the conditions of a licence granted by the licensing authority. [950]

(3) Subject to the provisions of subsection (4) of this section, any such licence may be granted by the licensing authority for such period and subject to such conditions (including conditions as to the charges to be made by the holder of the licence) as the licensing authority think fit, and may at any time be revoked by the licensing authority:

Provided that the licensing authority shall not, unless, in their opinion, it is expedient so to do with a view to securing the better use of the harbour in the national interest or the economical improvement, maintenance or management thereof, either—

- (i) refuse or revoke a licence under this section or impose any conditions thereon; or
- (ii) without the consent of the applicant, grant any licence for a period of less than seven years. [951]

(4) If any person, being an applicant for, or the holder of, any such licence, is aggrieved by any determination of the licensing authority as respects the granting or revocation of the licence, or the conditions to be attached thereto, he may appeal to the Transport Tribunal, and the tribunal shall make such order as to the grant or revocation of the licence or the conditions which are to be attached thereto as they think just and proper in all the circumstances, and the licensing authority shall give effect to their order. [952]

(5) If any person provides any port facilities in or in connection with the harbour in such circumstances that a licence is necessary under this section, and he does so otherwise than under and in accordance with such a licence,

he shall be liable on summary conviction to a fine not exceeding ten pounds, and, if the contravention in respect of which he is so convicted is continued after the conviction, he shall be guilty of a further offence and liable in respect thereof on summary conviction to a fine not exceeding ten pounds for each day on which the contravention is so continued. [953]

*General note.*—This section, which deals with the licensing of port facilities, may be applied by schemes to the harbour or any of the harbours to which the schemes relate (see s. 66 (3) (f), *ante*). Except under licence, the section prohibits the provision of port facilities within any harbour to which it is applied, save in so far as the scheme may otherwise provide.

Provision is made for the issuing of licences, which will normally be granted freely and will last for a minimum period of seven years, and for the hearing by the Transport Tribunal of appeals by persons aggrieved by determinations of the licensing authority, and penalties are laid down for contravention of the provisions of the section.

*Harbours to which section is applied.*—See s. 66 (1), (3) (f), *ante*.

*Licensing authority.*—See sub-s. (1), *ante*.

*Transport Tribunal.*—This tribunal is the tribunal heretofore known as the Railway Rates Tribunal (see s. 125 (1), *post*).

*Offences.*—As to offences by bodies corporate, see s. 121 (3); title ROAD TRAFFIC, *post*.

*Definitions.*—For definitions of “contravention,” “harbour,” “the Minister” and “property,” see s. 125 (1), *post*.

## 68. Right to require acquisition of undertakings providing port facilities.

—(1) Where—

- (a) a person who, on the twenty-eighth day of November, nineteen hundred and forty-six was carrying on an undertaking the activities of which consisted wholly or partly of the provision of port facilities in the harbour (hereinafter in this section referred to as “the appellant”) appeals to the Transport Tribunal under subsection (4) of the last preceding section from a determination of the licensing authority in relation to the provision of port facilities in the harbour; and
- (b) the tribunal refuse, either in whole or in part, to do by their order what is asked for by the appellant on that appeal; and
- (c) the tribunal are satisfied that their refusal will involve a substantial interference with the carrying on by the appellant of some activity which he was carrying on before the said twenty-eighth day of November and which he has, up to the time of the determination which was the subject of the appeal, continued to carry on with only such intermissions, if any, as are incidental to the nature of the activity,

the tribunal may, on the application of the appellant, declare that the undertaking of the appellant, or some part thereof specified in the declaration, is to be transferred to such body, being either the licensing authority or some other body administering or taking part in administering the scheme relating to the harbour or providing port facilities thereunder, as may be specified in the declaration. [954]

(2) Where a declaration is made under the last preceding subsection, and at the expiration of six months from the making thereof no agreement has been entered into between the appellant and the body specified in the declaration for the acquisition by that body by agreement of the undertaking or of the part of the undertaking specified in the declaration, the appellant may apply to the Minister for an order giving effect to the transfer required by the declaration and the Minister shall make an order accordingly :

Provided that the Minister may permit such an application to be made before the expiration of the said six months if he is satisfied that there is no reasonable prospect of the transfer being effected by agreement. [955]

(3) Any such order shall apply to the transfer, with such exceptions and subject to such modifications as may be specified in the order, the provisions of this Act relating to transfers of undertakings or parts of undertakings under Part III of this Act, including provisions as to compensation :

Provided that—

(a) where the transfer is, in the opinion of the Minister, not comparable in the material respects with the form of transfer of the whole or part of an undertaking under Part III of this Act, the order may provide—

(i) in the case of a transfer which, in the opinion of the Minister, is comparable with the form of transfer of the whole or part of an undertaking effected under Part II of this Act, for compensation on a basis reasonably comparable, in his opinion, with that of the compensation provided under this Act in respect of that form of transfer; or

(ii) in any other case, for compensation in respect of the transfer which in his opinion is proper compensation; and

(b) before making the order the Minister shall give the body specified in the declaration and the appellant an opportunity of being heard before a person appointed by the Minister for that purpose, and shall consider the report of the person so appointed. [956]

(4) If the body specified in the declaration and the appellant so agree, the order may effect the transfer of a part only of the undertaking notwithstanding that the declaration related to the whole of the undertaking, or of the whole of the undertaking notwithstanding that the declaration related to part only thereof, or of a part of the undertaking not identical with the part of the undertaking specified in the declaration. [957]

*General note.*—This section, which was inserted by Amendment at the Committee Stage of the Bill, affords protection to persons who were, on November 28, 1946, carrying on undertakings providing port facilities in harbours to which s. 67 is applied, when, as a result of the refusal or revocation of licences, substantial interference will be caused to businesses carried on by them before and since that date. In such circumstances the Transport Tribunal is enabled to declare that the undertaking is to be transferred to one of the bodies administering the scheme or providing port facilities thereunder. In default of agreement between the parties for giving effect to such declaration, the Minister is enabled to give effect thereto by order.

Corresponding provision is made in the case of existing road haulage undertakings by s. 54 (title ROAD TRAFFIC, *post*). Compare also the provision for compensation made in the case of existing passenger road transport undertakings by s. 64 (4) (title ROAD TRAFFIC, *post*).

November 28, 1946.—This is the day immediately preceding the First Reading of the Bill in the House of Commons.

*Transport Tribunal.*—This tribunal is the tribunal heretofore known as the Railway Rates Tribunal (see s. 125 (1), *post*).

*Licensing authority.*—The licensing authority under the scheme (see s. 67 (1), *ante*).

*Order.*—As to orders, see s. 120 (title ROAD TRAFFIC, *post*).

*Part III of this Act.*—This Part is printed under the title ROAD TRAFFIC, *post*.

*Compensation for transfer under Part II of the Act.*—See s. 25, printed under the title ROAD TRAFFIC, *post*.

*Definitions.*—For definitions of “harbour,” “the Minister” and “port facilities,” see s. 125 (1), *post*.

**69. Holyhead harbour.**—All property, rights, powers and liabilities of the Minister as successor to the Board of Trade in respect of Holyhead harbour shall, on the appointed day, become the property, rights, powers and liabilities of the Commission. [958]

*Appointed day.*—S. 125 (3) of the Act provides that, except in so far as the context otherwise requires, the expression “the appointed day” means such day as the Minister may by order appoint, and different days may be appointed for different purposes and different provisions of the Act. No day had been appointed under this section at the time of going to press.

*The Commission.*—The British Transport Commission.

*Definitions.*—For definitions of “liability,” “the Minister” and “property,” see s. 125 (1), *post*.

### *Coastal Shipping*

**70. Working agreements as to coastal shipping.**—Without prejudice to any powers possessed by the Commission apart from the provisions of this section, the Commission shall have power to enter into and carry out agree-

ments with any person engaged in coastal shipping for co-ordinating the activities of that person with those of the Commission, and, in particular, for facilitating the through carriage of goods, for the quoting of through rates, and for the pooling of receipts or expenses. [959]

*The Commission.*—The British Transport Commission.

*Coastal shipping.*—For definition of this term, see s. 125 (1), *infra*.

**71. Advisory Committee as to coastal shipping.**—(1) The Minister shall establish a Coastal Shipping Advisory Committee for the purpose of considering and from time to time reporting to the Minister on all matters which may jointly affect the interests of the Commission and those of persons engaged in coastal shipping or which the Minister may refer to them for consideration. [960]

(2) The said Committee shall consist—

- (a) of such number of members representing the interests of persons engaged in coastal shipping as the Minister thinks fit, to be appointed by him after consultation with such body or bodies as he thinks fit, being a body or bodies who appear to him to be representative of those persons; and
- (b) such number of representatives of the Commission as the Minister may determine, to be nominated by the Commission, of whom one at least shall be a member of the Commission :

Provided that the number of members of the Committee representing the interests of persons engaged in coastal shipping shall not be less than the number of representatives of the Commission on the said Committee. [961]

(3) The Committee shall appoint their own chairman from among their own members and their procedure, including their quorum, shall be such as they may determine. [962]

(4) If the Committee make a report to the Minister with respect to any matter, the Minister may give to the Commission such directions as he thinks fit as to the exercise of the Commission's powers with respect to that matter (being directions which, in his opinion, it is necessary that he should give for securing that efficient coastal shipping services are maintained to the extent which he considers is required in the national interest), and the Commission shall give effect to any such directions. [963]

*Directions.*—Powers of giving directions to the Commission, in addition to that conferred by sub-s. (4), *supra*, are conferred on the Minister by s. 66 (9), *ante*, and by ss. 4, 6 (8), 63 (4), 92 (2) (b), 94 (3), (7) and 102, which are printed in the title ROAD TRAFFIC, *post*.

\* \* \* \* \*

## PART IX

### MISCELLANEOUS AND GENERAL

\* \* \* \* \*

**125. Interpretation.**—(1) In this Act, except so far as the contrary is expressly provided or the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say,—

\* \* \* \* \*

- “Charges” includes fares, rates, tolls and dues of every description ;
- “coastal shipping” means the carrying of goods or passengers in ships by sea to or from any point in Great Britain from or to any point in the United Kingdom, the Isle of Man, the Channel Islands or Eire, but does not include the carrying of goods or passengers in the exercise of a right of ferry legally established whether by Act of Parliament or otherwise ;



“contravention,” in relation to any provision of this Act or of any regulation or order made thereunder, includes a failure to comply with the requirements of that provision, and ‘contravene’ shall be construed accordingly ;

\* \* \* \* \*

“dock” includes any pier, jetty or other place at which ships can ship or unship goods or passengers ;

\* \* \* \* \*

“harbour” means any harbour, whether natural or artificial, and any port, haven, estuary, tidal or other river or inland waterway navigated by sea-going ships, and any dock ;

\* \* \* \* \*

“liability” includes an obligation ;

\* \* \* \* \*

“the Minister” means the Minister of Transport or the Minister of War Transport ;

\* \* \* \* \*

“port facilities” means the constructing, improving, maintaining, regulating, managing, marking or lighting of a harbour or any part thereof, the berthing, housing, moving or dry-docking of a ship which is in, or is about to enter, or has recently left a harbour, the loading or unloading of goods, or embarking or disembarking of passengers in or from any such ship, the lighterage or the sorting, weighing, warehousing or handling of goods in a harbour ;

\* \* \* \* \*

“property” does not include a mere contractual right ;

\* \* \* \* \*

“ship” includes every description of vessel used in navigation ;

“statutory provision” means a provision whether of a general or a special nature contained in, or in any document made or issued under, any Act, whether of a general or a special nature ;

\* \* \* \* \*

“Transport Tribunal” means the tribunal heretofore known as the Railway Rates Tribunal. [964]

\* \* \* \* \*

## ORDERS, CIRCULARS AND MEMORANDA

### NEWPORT HARBOUR COMMISSIONERS (RESUMPTION OF ELECTIONS) ORDER, 1947

*S. R. & O., 1947, No. 982*

*May 21, 1947*

Whereas by the Newport Harbour Commissioners (Extension of Term of Office) Order, 1945, provision was made under section two of the Chartered and Other Bodies (Temporary Provisions) Act, 1939, for postponing until the year nineteen hundred and forty-six the elections of such of the Newport Harbour Commissioners as are elected by the following classes of electors mentioned in section seventeen of the Newport (Monmouthshire) Harbour Act, 1890, that is to say :—

registered ship-owners of the port of Newport, persons engaged in the smelting of iron shipped at the said port,

persons engaged in the mining and working of coal shipped at the said port :



And whereas by the Newport Harbour Commissioners (Resumption of Elections) Order, 1946, provision was made under the said section two and under section one of the Chartered and Other Bodies (Resumption of Elections) Act, 1945, for the holding of elections in the year nineteen hundred and forty-six and for the modification, in relation to those elections, of certain provisions of the said Newport (Monmouthshire) Harbour Act, 1890, and in particular the provisions of section eighteen of that Act relating to the persons entitled to vote at the election of Commissioners by registered ship-owners :

And whereas it appears to His Majesty that owing to the continuance of abnormal conditions it is necessary or expedient to extend the operation of the said Newport Harbour Commissioners (Resumption of Elections) Order, 1946, to the elections due to be held in the year nineteen hundred and forty-seven, and for that purpose to make an Order in Council under the proviso to subsection (2) of section one of the said Chartered and Other Bodies (Resumption of Elections) Act, 1945 :

Now, therefore, His Majesty, in exercise of the powers conferred on Him by section one of the said Chartered and Other Bodies (Resumption of Elections) Act, 1945, and of all other powers enabling Him in that behalf, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows :—

1. The provisions of Article 1 of the Newport Harbour Commissioners (Resumption of Elections) Order, 1946, so far as they modify the provisions of section eighteen of the Newport (Monmouthshire) Harbour Act, 1890, relating to the persons entitled to vote at the election of Commissioners by registered ship-owners, shall extend, with the necessary variations, to the elections due to be held in the year nineteen hundred and forty-seven, and accordingly the said Act shall apply in relation to those elections subject to the following modifications :—

- (a) in addition to the persons entitled to vote by virtue of section eighteen, a person shall be entitled to vote at the election of Commissioners by registered ship-owners if he is a ship broker or shipping agent who—
  - (i) on the thirty-first day of March, nineteen hundred and forty-seven, was resident in the county borough of Newport or in the county of Monmouth ; and
  - (ii) has during the twelve months immediately preceding the said thirty-first day of March paid to the Commissioners the sum of twenty-five pounds or more in respect of harbour dues, and any such person shall be entitled to give one vote for any one or more of ten persons, and if he has during the said twelve months paid eighty-five pounds or more to the Commissioners as aforesaid he may, in addition, give one vote in respect of every sixty pounds by which the amount so paid exceeds twenty-five pounds for any one or more of such ten persons, so, however, that no person shall be entitled to give more than twenty votes for any one person ;
- (b) subsection (4) of section eighteen shall apply in relation to persons entitled to vote at the election of Commissioners by registered ship-owners by virtue of this Article as if for the references to a ship-owner there were substituted references to a ship broker or shipping agent and as if for references to shipping owned by a company there were substituted references to harbour dues paid by a company.

[965]

2. This Order may be cited as the Newport Harbour Commissioners (Resumption of Elections) Order, 1947. [966]

## MERSEY DOCKS AND HARBOUR BOARD (RESUMPTION OF ELECTIONS) ORDER, 1947

*S. R. & O., 1947, No. 1144*

*June 11, 1947*

Whereas by the Mersey Docks and Harbour Board (Temporary Provisions) Order, 1940, as amended by the Mersey Docks and Harbour Board (Temporary Provisions) Order, 1942, the Mersey Docks and Harbour Board (Temporary Provisions) Order, 1943, and the Mersey Docks and Harbour Board (Temporary Provisions) Order, 1944, provision was made under section two of the Chartered and Other Bodies (Temporary Provisions) Act, 1939, for postponing the election of elective members of the Mersey Docks and Harbour Board until the year nineteen hundred and forty-six :

And whereas by the Mersey Docks and Harbour Board (Resumption of Elections) Order, 1946, provision was made under section one of the Chartered and Other Bodies (Resumption of Elections) Act, 1945, for the holding of elections in the year nineteen hundred and forty-six and for the modification in relation to those elections, of certain provisions of the Mersey Docks and Harbour Acts relating to the qualifications of persons for election as elective members of the Board and of the persons qualified to vote at the elections of such members :

And whereas it appears to His Majesty that owing to the continuance of abnormal conditions it is necessary or expedient to extend the operation of the said Mersey Docks and Harbour Board (Resumption of Elections) Order, 1946, to the elections due to be held in the year nineteen hundred and forty-seven, and for that purpose to make an Order in Council under the proviso to subsection (2) of section one of the said Chartered and Other Bodies (Resumption of Elections) Act, 1945 ;

Now, therefore, His Majesty, in exercise of the powers conferred on Him by section one of the said Chartered and Other Bodies (Resumption of Elections) Act, 1945, and of all other powers enabling Him in that behalf, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered as follows :—

1. The Mersey Docks and Harbour Board (Resumption of Elections) Order, 1946 (which modifies, in relation to elections to be held in nineteen hundred and forty-six, certain provisions of the Mersey Docks and Harbour Acts relating to the qualifications of elective members of the Mersey Docks and Harbour Board and of voters at the election of such members), shall extend to the election of elective members of the said Board to be held in the year nineteen hundred and forty-seven, and accordingly Article one of that Order shall have effect, in relation to that election, as if for the words “nineteen hundred and forty-six”, wherever they occur, there were substituted the words “nineteen hundred and forty-seven”. [967]

2.—(1) This Order may be cited as the Mersey Docks and Harbour Board (Resumption of Elections) Order, 1947.

(2) In this Order the expression “the Mersey Docks and Harbour Acts” means the Mersey Docks and Harbour Act, 1857, the Mersey Docks Acts Consolidation Act, 1858, the Mersey Docks Act, 1880, the Mersey Docks Act, 1881, and the Mersey Docks and Harbour Board Act, 1889.

(3) The Interpretation Act, 1889, shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament. [968]

\* \* \* \* \*

**DUNDEE HARBOUR TRUSTEES (RESUMPTION OF ELECTIONS) ORDER, 1947**

*S. R. & O., 1947, No. 1590/S.63*

*July 25, 1947*

Whereas in exercise of the powers conferred on Him by section one of the Chartered and Other Bodies (Temporary Provisions) Act, 1939, His Majesty in Council was pleased to make provision by Orders in Council postponing during the years nineteen hundred and forty-one to nineteen hundred and forty-five the elections of the Trustees of the Harbour of Dundee.

And whereas in exercise of the powers conferred on Him by section one of the Chartered and Other Bodies (Resumption of Elections) Act, 1945, His Majesty was pleased by Order in Council to modify the provisions of the Dundee Harbour and Tay Ferries Acts 1911 to 1933 (hereinafter together referred to as "the special Act") in such manner as to enable elections of the Trustees of the Harbour of Dundee to be held in the year nineteen hundred and forty-six and to enable the Trustees elected to remain in office until the third Tuesday of November nineteen hundred and forty-seven.

And whereas it appears that the triennial election of the said Trustees is due to be held in the year nineteen hundred and forty-seven under the provisions of the special Act and that owing to the continuance of abnormal conditions it is necessary and expedient to extend, for the purposes of that election, the said modifications so far as relating to the qualifications of the persons entitled to be electors as harbour ratepayers, and to make provisions for incidental and consequential matters.

Now, therefore, His Majesty in the exercise of the powers conferred on Him by section one of the Chartered and Other Bodies (Resumption of Elections) Act 1945 and of all other powers enabling Him in that behalf is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered as follows:—

1. Subject to the provisions of this Order the election of the Trustees of the Harbour of Dundee to be held in the year nineteen hundred and forty-seven shall be in accordance with the provisions of the special Act. [969]

2. Notwithstanding anything contained in the special Act, the register of qualified harbour ratepayers to be used for the purposes of the said election in November, nineteen hundred and forty-seven, shall be the register of qualified harbour ratepayers used for the purpose of the election held in the year nineteen hundred and forty-six (hereinafter referred to as "the 1946 register"),

Provided that—

- (a) on or before the thirtieth day of September, nineteen hundred and forty-seven, any company or incorporated company who in terms of sections twenty-three and twenty-four of the Dundee Harbour and Tay Ferries Consolidation Act, 1911, nominated persons for inclusion in the register of qualified harbour ratepayers for the year nineteen hundred and thirty-eight, may revise the name and address of any person appearing as their nominee in the 1946 register, and may substitute therefor the name and address of another qualified person, and any such company, or incorporated company, who in terms of the said sections were entitled to nominate persons for inclusion in the register of qualified harbour ratepayers for the year nineteen hundred and thirty-eight, may on or before the date aforementioned notwithstanding that they did not so nominate any person in the year nineteen hundred and thirty-eight, or in the year nineteen hundred and

forty-six, nominate persons in pursuance of the said sections for the purposes of the election to be held in the year nineteen hundred and forty-seven;

- (b) the 1946 register as altered in accordance with paragraph (a) hereof shall be made available for inspection by the public (of which notice shall be duly published) and names may be added to it by order of the Sheriff at Dundee, all in accordance with the Provisions of the Special Act;

Provided that applications to the said Sheriff for the addition of names shall be made on or before the twentieth day of October, nineteen hundred and forty-seven. [970]

3. The Trustees elected by the harbour ratepayers at the election in November, nineteen hundred and forty-seven, shall remain in office until the third Tuesday in November, nineteen hundred and fifty. [971]

4. During the period between the third Tuesday in November, nineteen hundred and forty-seven and the third Tuesday in November, nineteen hundred and fifty, the 1946 register amended as aforesaid for the purpose of the election to be held in the year nineteen hundred and forty-seven, shall be used for the purpose of filling casual vacancies occurring among the Trustees representing harbour ratepayers in accordance with the provisions of the special Act. [972]

5. This Order may be cited as "The Dundee Harbour Trustees (Resumption of Elections) Order, 1947". [973]

6. The Interpretation Act, 1889 shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament. [974]

\* \* \* \* \*

### EXPLANATORY NOTE

*(This Note is not part of the Order, but is intended to indicate its general purport.)*

The elections of the Trustees of the Harbour of Dundee were postponed during the years 1941 to 1945 by Order in Council made under the Chartered and Other Bodies (Temporary Provisions) Act, 1939. By Order in Council made under the Chartered and Other Bodies (Resumption of Elections) Act, 1945, it was provided that an election of Trustees should be held in the year 1946, that there should be certain modifications in the register of qualified ship-owners and qualified harbour ratepayers for the purposes of that election and that the Trustees so elected should hold office for one year instead of three.

The present Order provides that the modifications in the register of qualified harbour ratepayers shall continue in operation for the election of Trustees in 1947 and that the Trustees elected in 1947 shall hold office for the normal term of three years.

## HIGHWAYS

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### CASES

*Animals—Trespass—Horse on highway—Escape through gap in fence of field adjoining highway—Collision with cyclist—Duty so to maintain gates and*

*fences that escape of animals impossible—Duty to take reasonable care to prevent escape.*

*Practice—Appeal to House of Lords—Leave to appeal—Appellant a poor person—Consideration of respondent's position as to costs.*

In April, 1944, at about 1.30 a.m. and during "black-out" conditions, the appellant was cycling along the highway when he was injured through coming into collision with a horse (which was not of a mischievous nature) belonging to the respondent who kept it in a field adjoining the highway. At the time of the accident the horse was straying unattended on the highway on which it had got through a gap in the fence which separated the highway from the field:—

*Held*: the respondent was not liable in negligence because (a) there was no *prima facie* legal obligation on him, as the owner of a field abutting on the highway, to users of the highway so to maintain his fence as to prevent his animals from straying on to the highway, and (b) he was under no duty as between himself and users of the highway to take reasonable care to prevent any of his animals (not known to be dangerous) from straying on to the highway.

*Per Viscount MAUGHAM*: In such a case, if the animal is wild by nature or is a domestic animal known to be dangerous, I can readily conceive that the possibility or probability of danger to passers-by might impose a duty of reasonable care.

*Per Viscount MAUGHAM*: When the Court of Appeal gives leave to appeal to the House of Lords in what is regarded as a test case, the position of the respondent as to costs, if the appeal should fail, ought to be borne in mind. It is an unfortunate fact for the respondent in the present case that the appellant presents his appeal as a poor person.—*SEARLE v. WALLBANK*, [1947] A. C. 341; [1947] 1 All E. R. 12; [1947] L. J. R. 258; 176 L. T. 104; 63 T. L. R. 24; 91 Sol. Jo. 83, H. L. [1975]

*Highways—Wilful obstruction of footway—Business not carried on in normal manner—Selling from window of, and not inside, shop—Liability of shopkeeper—Highway Act, 1835 (c. 50), s. 72.*

A shopkeeper sold ice-cream from a window of her shop, which the justices found was not the ordinary manner of conducting her business. A crowd assembled which obstructed the highway, and the shopkeeper ignored a suggestion made by the police that the sale be made within the shop:—

*Held*: as the obstruction could have been avoided by the shopkeeper selling the ice-cream inside the shop in the ordinary way and not through the window, the obstruction was wilful and the shopkeeper was liable.

*Dwyer v. Mansfield*, [1946] K. B. 437; [1946] 2 All E. R. 247, distinguished.—*FABRI v. MORRIS*, [1947] 1 All E. R. 315; 176 L. T. 172; 111 J. P. 97; 63 T. L. R. 34; 91 Sol. Jo. 161; 45 L. G. R. 182. [1976]

*Highways—Diversion—Powers of quarter sessions—No appeal against diversion order—Highway Act, 1835 (c. 50), ss. 84, 85.*

A certificate in relation to the diversion of a highway lodged with the clerk of the peace in accordance with s. 85 of the Highway Act, 1835, showed that all formalities with regard to notices, view by the justices, etc., had been complied with, but, in the view of quarter sessions, the proposed new road was less commodious than the old one because it contained two new right-angled turns and debouched into another road in an unsatisfactory way. Quarter sessions, accordingly, held that the certificate was bad on the face of it, and refused to enrol it. On an application by the local autho-

rity for an order of *mandamus* directing quarter sessions to enrol the certificate and make the necessary order :—

*Held* : quarter sessions had no jurisdiction to go into the question of the convenience or adequacy of the proposed new highway ; their duty, if there was no appeal, was to satisfy themselves that the statutory provisions had been complied with, and, that on the face of the certificate, the proceedings were in order, and, if satisfied, to enrol the certificate and make the necessary order ; and, therefore, an order for *mandamus* would be made.—*R. v. ESSEX JJ., Ex parte EAST HAM BOROUGH COUNCIL*, [1947] K. B. 680 ; [1947] 1 All E. R. 775 ; 177 L. T. 146 ; 111 J. P. 313 ; 63 T. L. R. 412 ; 45 L. G. R. 276. [977]

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## ORDERS, CIRCULARS AND MEMORANDA

### NURSES REGULATIONS, 1947

*S. R. & O.*, 1947, No. 145

*January 28, 1947*

The Minister of Health, in exercise of the powers conferred on him by proviso (b) to subsection (1) of section 6, and by Part II, of the Nurses Act, 1943, and of all other powers enabling him in that behalf, hereby makes the following regulations :—

1.—(1) These regulations may be cited as the Nurses Regulations, 1947, and shall come into operation on the first day of February, 1947.

(2) The Nurses Regulations, 1945, the Nurses (No. 2) Regulations, 1945, the Nurses Amendment Regulations, 1946, the Nurses Amendment (No. 2) Regulations, 1946, and regulation 2 of these regulations may be cited together as the Nurses Regulations, 1945 to 1947 ; and the Nurses Agencies Regulations, 1945, and regulation 3 of these regulations may be cited together as the Nurses Agencies Regulations, 1945 and 1947.

(3) The Interpretation Act, 1889, applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament. [978]

2. A person who has satisfied the General Nursing Council for England and Wales that he or she—

(a) would have been eligible for admission to some part of the list kept by the said Council under section 18 of the Nurses Act, 1943, if he or she had applied for admission thereto within two years from the passing of that Act ; and

(b) was prevented from applying for such admission within the said period by circumstances beyond his or her control occasioned by the war then in progress ;

may use any name or title, or use in relation to himself or herself any expres-



sion, which he or she would be entitled under the Nurses Regulations, 1945, to use if he or she was for the time being on that part of the said list. [979]

3. The following paragraph shall be inserted in regulation 3 of the Nurses Agencies Regulations, 1945 (which prescribes classes of persons who, in addition to registered nurses, enrolled assistant nurses and certified midwives, may be supplied by a person carrying on an agency for the supply of nurses) after paragraph (e) :—

“(ee) persons who are entitled by virtue of the Nurses Regulations, 1947, to use the name or title of “trained nurse,” or any expression containing those words.” [980]

\* \* \* \* \*

### EXPLANATORY NOTE

*(This Note is not part of the regulations, but is intended to indicate their general purport.)*

*These regulations deal with the position of persons who satisfy the General Nursing Council that they were qualified for inclusion in the list kept by the Council but were prevented by the war from applying for that inclusion before the period for such applications expired in April, 1945.*

*Regulation 2 provides for such persons being entitled to describe themselves as trained nurses or as trained nurses of a particular type in the same way as if they were included in the list, and regulation 3 provides similarly for the supply of such persons by agencies for the supply of nurses.*

### CASES

*Medicine and pharmacy—Medical practitioner—Pharmacist—Negligence—Liability of hospital—Dangerous and negligent system—Injection of lethal dose of cocaine—Apportionment of damages between joint tortfeasors—Law Reform (Married Women and Tortfeasors) Act, 1935 (c. 30), s. 6 (2).*

While undergoing an operation, a patient in a county council hospital was killed by an injection of cocaine which was given by the operating surgeon in the mistaken belief that it was procaine. The operating surgeon had ordered procaine on the telephone, but the resident house surgeon (who was then unqualified) had mis-heard “procaine” as “cocaine,” and had told the pharmacist to dispense a mixture which was, in fact, lethal. The pharmacist dispensed the mixture without making further inquiry and without requiring the written instruction of a qualified person, and the operating surgeon had given the injection without checking that it was what he had ordered. The operating surgeon, the house surgeon and the pharmacist were all three in the full-time or part-time employment of the council. In an action by the patient’s widow against the county council and the operating surgeon alleging that the death was the result of (a) the council’s negligence in the conduct of their hospital, and (b) the operating surgeon’s failure to exercise reasonable care :—

*Held* : (i) the county council, in managing the hospital, was permitting a dangerous and negligent system to be in operation, and the operating surgeon and the house surgeon had failed to exercise reasonable skill and care.

(ii) the council were able to control the manner in which the resident medical officer performed her work, and, therefore, the acts of the house surgeon done in the course of her employment were acts for which the council was responsible.

(iii) although the operating surgeon was a part-time employee on the staff of the council, the council could not control how he was to perform his duties and was not responsible for his want of care.



*Gold v. Essex County Council* ([1942] 2 K. B. 293; [1942] 2 All E. R. 237), applied.

*Quaere*, whether *Hillyer v. St. Bartholomew's Hospital (Governors)* ([1909] 2 K. B. 820) still a binding authority.

(iv) the county council and the surgeon were to contribute in equal proportions to the amount of damages recoverable by the plaintiff.—*COLLINS v. HERTFORDSHIRE COUNTY COUNCIL*, [1947] K. B. 598; [1947] 1 All E. R. 633; [1947] L. J. R. 789; 176 L. T. 456; 111 J. P. 272; 63 T. L. R. 317; 45 L. G. R. 263. [1981]

*Negligence—Bailee—Hospital—Patient's property deposited on admission—Liability of hospital for loss—Measure of damages.*

A local authority, who were under a statutory duty to maintain a hospital and to admit patients thereto, but were empowered to recover all the expenses to which they were put (including the cost of looking after patients' property), admitted a patient into the institution and took possession of certain jewellery and a cigarette case which she had in her handbag. They were unaware at the time that the articles were of value, but shortly afterwards they received a letter from the patient's sister asking for confirmation of the contents of the patient's handbag and referring to diamonds. They did not reply. The articles were entered in a book and stored with hundreds of others in envelopes on the floor in a room which a burglar would have had no difficulty in breaking into. They were not put into a safe even after receipt of the letter, and they disappeared, presumably being stolen. In an action against the authority for the return of the chattels or their value, and damages for their detention, and, alternatively, for damages for conversion, negligence, or breach of duty:—

*Held*: (i) the local authority were bailees, but not gratuitous bailees, and so had a higher duty of care than that required from a gratuitous bailee.

(ii) they were not entitled to assume that a patient's property was of no value, and they were negligent in not storing the property in a safe, particularly after the receipt of the letter drawing their attention to its value.

(iii) in arriving at the value of the property to determine the damages, purchase tax should be taken into consideration.—*MARTIN v. LONDON COUNTY COUNCIL*, [1947] K. B. 628; [1947] 1 All E. R. 733; [1947] L. J. R. 1231; 177 L. T. 38; 111 J. P. 310; 63 T. L. R. 284; 91 Sol. Jo. 264; 45 L. G. R. 470. [1982]

## HOUSING

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# ORDERS, CIRCULARS AND MEMORANDA

## HOUSING ACTS (EQUALISATION ACCOUNT) REGULATIONS, 1947

*S. R. & O., 1947, No. 379*

*March 3, 1947*

The Minister of Health in exercise of the powers conferred on him by section 176 of the Housing Act, 1936, and of all other powers enabling him in that behalf, hereby makes the following regulations :—

1. These regulations may be cited as the Housing Acts (Equalisation Account) Regulations, 1947. [983]

2.—(1) In these regulations, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them :—

“ the Act of 1923 ” means the Housing, &c., Act, 1923 ;

“ the Act of 1924 ” means the Housing (Financial Provisions) Act, 1924 ;

“ the Act of 1936 ” means the Housing Act, 1936 ;

“ the Act of 1938 ” means the Housing (Financial Provisions) Act, 1938 ;

“ the Minister ” means the Minister of Health ; and

“ Housing Revenue Account ” and “ Housing Equalisation Account ” have the same meaning as in the Act of 1936.

(2) The Interpretation Act, 1889, applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament. [984]

3. The Housing Acts (Equalisation Account) Regulations, 1938, are hereby revoked, but without prejudice to anything done thereunder. [985]

4. Subject to the provisions of these regulations, every local authority who keep a Housing Equalisation Account shall in each financial year beginning on the 1st day of April carry to the credit of that account from the Housing Revenue Account the aggregate of the under-mentioned sums, namely :—

(a) an amount equal to the one-seventh part of the aggregate amount of the Exchequer contributions payable to the authority for that year under—

(i) paragraph (b) of subsection (1) of section 1 of the Act of 1923, as amended by sections 1 and 2 of the Act of 1924 ;

(ii) sections 105, 106 and 108 of the Act of 1936 ;

(iii) sections 1 and 2 of the Act of 1938 ;

(b) an amount equal to the one-seventh part of the aggregate amount of any contributions payable to the authority for that year from a county council under—

(i) section 115 of the Act of 1936 ;

(ii) section 7 of the Act of 1938. [986]

5. If a local authority satisfy the Minister that, having regard to arrangements made by them for repaying money borrowed for expenditure in connexion with the provision of the houses to which the Housing Revenue Account relates, or for any other reason, it is necessary or expedient that the total amount to be carried to the credit of the Housing Equalisation Account in any year under regulation 4 of these regulations should be varied, the amount to be carried to the credit of that account in that year shall be such sum as the Minister may determine to be appropriate in all the circumstances.

[987]

6. If a local authority satisfy the Minister that it is necessary or expedient that an amount should be carried in any year from the Housing Revenue Account in respect of contributions payable under paragraph (b) of subsection (1) of section 1 of the Act of 1923 or under section 107 of the Act of 1936 to the credit of the Housing Equalisation Account the amount to be carried to the credit of that account in that year in respect of the said contributions shall be such sum as the Minister may determine to be appropriate. [988]

7. Where a local authority keep a Housing Equalisation Account such sums as they may, with the approval of the Minister, think it necessary or desirable to transfer to the Housing Revenue Account with a view to carrying out the objects of section 132 of the Act of 1936 shall from time to time be transferred from the Housing Equalisation Account accordingly but, subject to the foregoing provision, an amount equal to all moneys standing to the credit of the Housing Equalisation Account shall be applied in manner provided by section 133 of the Act of 1936. [989]

\* \* \* \* \*

### EXPLANATORY NOTE

*(This Note is not part of the Regulations, but is intended to indicate their general purport.)*

*These Regulations take the place of the Housing Acts (Equalisation Account) Regulations, 1938, and are rendered necessary by the amendment to section 132 of the Housing Act, 1936, which is made by section 21 (5) of the Housing (Financial and Miscellaneous Provisions) Act, 1946, the effect of which is to leave the keeping of a Housing Equalisation Account to the local authority's discretion.*

### CASES

*Public health—Housing—Compulsory purchase order—Confirmation by Minister—Regard had by Minister to letters from local authority received by him while acting administratively—Right of Minister to use knowledge gained by him extra-judicially—Housing Act, 1936 (c. 51), s. 29 (1), Sched. I (4).*

In confirming a compulsory purchase order made by a local authority, the Minister of Health had regard not only to the evidence given at the public inquiry, but also to two letters from the local authority received by him three years earlier. These letters merely stated that the object of the local authority was "the rapid erection of as large a number of dwellings as possible" and that the authority's attention had been drawn to certain areas [including the area in question] which had suffered extensively from damage by enemy action and "the acquisition of which would enable housing development to be commenced immediately conditions permit." Since these letters were not in evidence at the public inquiry, it was contended by the objectors to the order that the confirmation order was bad:—

*Held:* (i) it was not necessary for copies of the letters to have been laid before the objectors and they had not been prejudiced by not having had an opportunity of dealing with them.

(ii) the letters having been received by the Minister before the public inquiry and while he was still acting in an administrative capacity, and there being nothing in them which required them to be given in evidence at the public inquiry, there was no ground for quashing the confirmation order.

*Errington v. Minister of Health*, [1935] 1 K. B. 249, and *Stafford v. Minister of Health*, [1946] K. B. 621, distinguished.

*Offer v. Minister of Health*, [1936] 1 K. B. 40, and *Miller v. Minister of Health*, [1946] K. B. 626, *applied*.—*PRICE v. MINISTER OF HEALTH*, [1947] 1 All E. R. 47; [1947] L. J. R. 291; 176 L. T. 305; 111 J. P. 56; 63 T. L. R. 9; 45 L. G. R. 13. [1990]

*Public health—Housing—Compulsory acquisition of land—“Persons employed or paid by county council”—Superintendent of police—Housing Act, 1936 (c. 57), s. 97.*

By s. 97 of the Housing Act, 1936: “A county council . . . shall have power to provide houses for persons employed or paid by, or by a statutory committee of, the council . . . and for that purpose may be authorised to acquire or appropriate land in like manner as a local authority may be authorised to acquire or appropriate land for the purposes of [Part V] of this Act.” Part V of the Act is headed: “Provision of housing accommodation for the working classes”.

In February, 1946, the Lancashire County Council made an order for the compulsory acquisition of a house and its grounds to provide a residence for a police superintendent of the Lancashire county police whose annual income amounted to £800 and, after a public inquiry had been held, the Minister of Health confirmed the order. On an appeal by the applicants, the executors of the owner of the house, against the confirmation:—

*Held*: (i) the police superintendent did not come within the group designated by the phrase “working class”, but

(ii) the persons for whom houses might be provided under s. 97 need not be persons of the “working class”, and

(iii) the police in a county are paid by the county council and, therefore, the police superintendent came within s. 97 of the Act, and the order was validly made and confirmed.—*RODWELL v. MINISTER OF HEALTH*, [1947] K. B. 404; [1947] 1 All E. R. 80; [1947] L. J. R. 568; 176 L. T. 193; 111 J. P. 72; 63 T. L. R. 45; 91 Sol. Jo. 43; 45 L. G. R. 60. [1991]

*County courts—Adjournment—Action for recovery of possession—Vested right of action—Application by tenant for registration of premises under Defence Regulations—Refusal by local authority—Adjournment pending application to High Court for order of mandamus—Defence (General) Regulations, 1939 (S. R. & O., 1939, No. 927, as amended), reg. 68CB.*

In breach of a covenant in his lease, the tenant of a house sub-let rooms in the house to several tenants. After the commencement of proceedings by the landlord to recover possession of the house on that ground, the tenant applied to the local authority under the Defence Regulations, reg. 68CB, for registration of the house as accommodation available for occupation by tenants or lodgers, which would have the effect of nullifying any covenant against sub-letting, but an order for registration was refused. The county court judge, considering that, if the local authority did register the premises, he would be precluded from giving effect on the trial of the action to the landlord's claim for forfeiture of the lease, granted an adjournment at the request of the tenant, pending an application to the High Court by way of *mandamus* to compel the local authority to reverse their previous decision:—

*Held*: before the application by the tenant for registration the landlord had a vested right of action in respect of the breaches of covenant; reg. 68CB had no retrospective effect; and, therefore, the landlord was entitled to have the issue of forfeiture of the lease on the ground of breach of covenant decided as a matter of law by the competent tribunal and the judge erred in law in granting an adjournment.—*OUZMAN v. KENNEDY*, [1947] K. B.

*Public health—Housing—Compulsory purchase order—Confirmation by Minister—Matters to be considered by Minister—Originating notice of motion entered at Crown Office within 6 weeks after publication of notice of confirmation, but notice of motion not served on Minister or local authority within the 6 weeks—Whether notice of motion out of time—Power of court to enlarge time for service—Housing Act, 1936 (c. 51), Sched. II, para. 2—R. S. C., Ord. 55B, r. 74; Ord. 64, r. 7.*

The objectors to a compulsory purchase order (made on February 9, 1946), in sending their objections to the Ministry of Health, stated that the objections set out were "the principal grounds of objection." The Minister, after considering the objections and certain other documents which were before him, confirmed the compulsory purchase order, the confirmation order being published on May 4, 1946. The objectors made an application under the Housing Act, 1936, Sched. II, para. 2, for the Minister's order to be quashed on the grounds (a) that a requirement of the Act had not been complied with, in that the Minister had failed properly or fully to consider their objections, no opportunity having been given to them to elaborate the objections which had been set out; (b) that documents which were before the Minister when he made his decision had not been made available to the objectors. Of the six documents objected to, three had been received by the Minister from another government department before the compulsory purchase order had been made (*i.e.* while the Minister was still acting in an administrative capacity) and two were communications between the Minister and the local authority also written before that date. The sixth, dated March 15, 1946, was from another government department to the local authority stating that that department raised no objection to the proposed use of the site for housing purposes. The originating notice of motion by which it was sought to quash the confirmation order was entered at the Crown Office on June 14, 1946, but the notice of motion was not served on the Minister or on the local authority until June 20, 1946, more than six weeks after the publication of the confirmation order and a preliminary point was taken by the Minister that the notice was out of time:—

*Held*: (i) the notice of motion was out of time because not only should the originating notice of motion have been entered at the Crown Office within six weeks from the date of the publication of the confirmation order as provided by Sched. II, para. 2, to the Act of 1936, but also, under R. S. C., Ord. 55B, r. 74, the notice of motion should have been served within that period on the Minister and on anyone else on whom it was to be served. The court had, however, power under R. S. C., Ord. 64, r. 7, to enlarge the time for service, since the period for service was specified by the rules and not by the Act, the "application" (the period for which was specified by Sched. II, para. 2, to the Act) being, as indicated by R. S. C., Ord. 55B, r. 71, the originating notice of motion.

(ii) it was not necessary for the Minister, before adjudicating on the matter, to send any of the documents in question to the objectors, and they had not been prejudiced by not having them.

*Miller v. Minister of Health*, [1946] K. B. 626, and *Offer v. Minister of Health*, [1936] 1 K. B. 40, *applied*.

(iii) it was not established that the Minister had failed properly and in a correct manner to consider the objections and there was no ground for quashing the order.

*Miller v. Minister of Health*, *supra*, *followed*.—*SUMMERS v. MINISTER OF HEALTH*, [1947] 1 All E. R. 184; 176 L. T. 237; 111 J. P. 89; 45 L. G. R. 105. [1993]

*Public health—Housing—Limitation of purchase price of houses constructed under building licence—Sale of registered land at price exceeding limit—Place of sale—Jurisdiction of justices—Building Materials and Housing Act, 1945 (c. 20), ss. 7 (1), 9 (3).*

A sale, within the meaning of the Building Materials and Housing Act, 1945, s. 7 (1), takes place where the contract is completed, and it is immaterial that the transaction requires registration at the Land Registry Office. Consequently, justices for the area in which the sale is completed, and not those in the Land Registry area, have jurisdiction to deal with a summons for contravening s. 7 (1).—*R. v. EDWARDS, Ex parte JOSEPH*, [1947] K. B. 392; [1947] 1 All E. R. 314; [1947] L. J. R. 538; 111 J. P. 163; 45 L. G. R. 79, D. C. [1994]

*Crown practice—Certiorari—When order granted—Furnished Houses Rent Tribunal—Furnished Houses (Rent Control) Act, 1946 (c. 34), s. 2.*

*Certiorari* does not lie to bring up and quash a decision of a tribunal constituted under the Furnished Houses (Rent Control) Act, 1946, when the decision is good on its face and not outside the jurisdiction of that tribunal.—*R. v. FURNISHED HOUSES RENT TRIBUNAL FOR PADDINGTON & ST. MARYLEBONE, Ex parte KENDAL HOTELS, LTD.*, [1947] 1 All E. R. 448; 176 L. T. 330; 63 T. L. R. 239. [1995]

*Landlord and tenant—Rent control—“Rent which includes payment for use of furniture or for services”—Need of contractual obligation of landlord—Breach of contract—Jurisdiction of tribunal—Furnished Houses (Rent Control) Act, 1946 (c. 34), ss. 2 (1), 12 (1).*

In the absence of any contractual obligation on the landlord to provide furniture or services the rent of premises cannot be said to include “payment for the use of furniture or for services” within s. 2 (1) of the Furnished Houses (Rent Control) Act, 1946, and, consequently, a rent tribunal has no jurisdiction to hear and determine a case referred to it by the lessee of such premises.

*Per cur.*: where there is a provision for the supply of furniture or services, or both, the tribunal must see what the lease provides and consider whether the rent reserved is a fair rent for the use of the premises with those services, but the Act gives the tribunal no power to decide questions of breach of contract or to award compensation to tenants for breaches of contract by way of reduction of rent. Where, therefore, a tribunal has jurisdiction to hear a case it is not entitled to reduce the rent merely because the landlord is not providing that which he has contracted to provide.—*R. v. HAMPSTEAD & ST. PANCRAS FURNISHED HOUSES RENT TRIBUNAL, Ex parte ASCOT LODGE, LTD.*, [1947] K. B. 973; [1947] 2 All E. R. 12; [1947] L. J. R. 1003; 176 L. T. 560; 111 J. P. 349; 63 T. L. R. 301; 91 Sol. Jo. 265; 45 L. G. R. 363, D. C. [1996]

*Landlord and tenant—Rent control—Furnished house—Reduction of rent—Reduction below amount of standard rent—Furnished Houses (Rent Control) Act, 1946 (c. 34), s. 7.*

There is no jurisdiction in a rent tribunal set up under the Furnished Houses (Rent Control) Act, 1946, to reduce the rent of any premises below the standard rent for those premises. The tribunal is, in effect, forbidden to do so by s. 7 of the Act which preserves, *inter alia*, the standard rent and all rights in respect of it, whether of the landlord or the tenant.

The provision by a landlord of services cannot, in the absence of contractual obligation to supply such services, operate to bring a letting within

the jurisdiction of a rent tribunal under the Furnished Houses (Rent Control) Act, 1946.

*R. v. Hampstead & St. Pancras Furnished Houses Rent Tribunal, Ex parte Ascot Lodge, Ltd.*, [1947] K. B. 973; [1947] 2 All E. R. 12, *followed*.—*R. v. PADDINGTON & ST. MARYLEBONE RENT TRIBUNAL, Ex parte BEDROCK INVESTMENTS, LTD.*, [1947] K. B. 984; [1947] 2 All E. R. 15; 176 L. T. 562; 111 J. P. 367; 63 T. L. R. 303; 91 Sol. Jo. 310; 45 L. G. R. 478. [997]

*Public health—Housing—Accommodation of working classes—Recovery of possession—Rent exceeding £20—Summary procedure before justices—Suspension of warrant—Small Tenements Recovery Act, 1838 (c. 74), s. 1—Housing Act, 1936 (c. 51), ss. 83 (1), 156 (1) (a), (2).*

The letting of premises to a member of the working classes is within the powers of management vested in a local authority by s. 83 (1) of the Housing Act, 1936, even although the eviction from the premises of another member of the working classes is involved (*R. v. Snell, Ex parte Marylebone Borough Council*, [1942] 1 All E. R. 612, *followed, but criticised*). Therefore, in such a case, a local authority may, by virtue of s. 156 (1) (a) and s. 156 (2) of the Act, recover possession under the Small Tenements Recovery Act, 1838, whatever may be the rent of the premises, and the Rent Restrictions Acts are excluded. Accordingly, a warrant made by a magistrate for the possession of such premises cannot be suspended under the Increase of Rent and Mortgage Interest Restrictions Act, 1920, s. 5 (4), for such time as the magistrate directs, but only for a maximum of thirty days under the Small Tenements Recovery Act, 1838, s. 1.—*LONDON COUNTY COUNCIL v. SHELLEY, HARCOURT v. LONDON COUNTY COUNCIL*, [1947] 2 All E. R. 320; [1947] L. J. R. 1270; 111 J. P. 487; 63 T. L. R. 475; 91 Sol. Jo. 517; affirmed, [1947] 2 All E. R. 720, C. A. [998]

*Public health—Housing—Compulsory purchase order—Confirmation—Duties of Minister—Disclosure of information acquired before order made—"Lis"—"Quasi-judicial"—"Duty to act fairly"—Housing Act, 1936 (c. 51), Sched. I (4), (5).*

Owners of land comprised in a compulsory purchase order made by a local authority under s. 74 of the Housing Act, 1936, and confirmed by the Minister of Health under Sched. I, para. (4), to the Act, applied to the court to quash the order on the grounds that the Minister, in considering objections to it, was bound to act in a quasi-judicial manner and that he had failed in that duty in that he had not made available to the objectors the contents (alleged to be relevant to the consideration of the objections) of certain letters written to the Minister by the local authority before the order was made:—

*Held*: the confirmation of the order was essentially an administrative act, and the obligation of the Minister did not go beyond making available to both sides matter which had come into existence for the purpose of the quasi-lis, the inception of which was marked and constituted by the making of the objections. There was, therefore, no obligation on the Minister to make available material which came into his possession before that date.

*Miller v. Minister of Health*, [1946] K. B. 626, *Summers v. Minister of Health*, [1947] 1 All E. R. 184, *ante*, and *Price v. Minister of Health*, [1947] 1 All E. R. 47, *ante*, approved.

*Board of Education v. Rice*, [1911] A. C. 179, and *R. v. Westminster Assessment Committee, Ex parte Grosvenor House (Park Lane), Ltd.*, [1940] 4 All E. R. 132, *distinguished*.—*JOHNSON & CO. (BUILDERS), LTD. v. MINISTER OF HEALTH*, [1947] 2 All E. R. 395; 177 L. T. 455; 111 J. P. 508, C. A. [999]

*Public health—Housing—Compulsory purchase order—Houses for "working classes"—Intended allocation outside those classes—Additional amenities*



*serving beneficial purpose to residents in neighbouring areas—Housing Act, 1936 (c. 51), ss. 73, 80.*

S. 73 of the Housing Act, 1936, gives a local authority power "to acquire any land . . . as a site for the erection of houses for the working classes," and s. 80 provides that, subject to the consent of the Minister of Health, the land may be used also for shops, recreation grounds and other buildings which "will serve a beneficial purpose in connection with the requirements of the persons for whom the housing accommodation is provided."

In 1938, a firm of builders acquired a plot of land with the idea of developing it for housing and they, or their predecessors, contributed to the cost of a main sewer that was put in by the local authority to drain part of that plot and other land. They prepared a lay-out plan and obtained a licence to develop the land. Preparatory to building, they put in systems of sewers and roads, and, in addition, in agreement with the local authority, they made two of the roads wider than they otherwise would be, so as to serve omnibus routes, and they put in a larger storm sewer than they otherwise would have done, so as to take away water from other areas. The outbreak of war, by which time they had built twenty-two houses, put a stop to further work, but the project and plan were kept afoot and in 1943 the licence to develop was renewed. After the war the local authority made a compulsory purchase order in respect of the land, in order to use it as a site for the erection of houses of a type suitable for the working classes, but then to allocate the houses to various applicants irrespective of actual occupation, according to a priority list, and to put up nurseries, a health centre and other amenities which would be available, not only to the residents on that particular area, but also to residents in neighbouring areas. The Minister of Health confirmed the order:—

*Held:* on a true interpretation of s. 73 of the Act, the local authority had power to acquire any land as a site for the erection of houses "of a type suitable for the occupation of the working classes," and there was no limitation as to the individuals who were eventually to occupy the houses; on a true interpretation of s. 80, the fact that the additional amenities would also serve a beneficial purpose for other persons did not make it any the less a beneficial purpose for the persons on the housing estate; and, consequently, the local authority had not exceeded their powers under the Act.

*Per cur.:* the use in statutes of the expression "working classes" is inappropriate to modern social conditions.—*GREEN & SONS v. MINISTER OF HEALTH*, [1947] 2 All E. R. 469; 111 J. P. 530. [1000]

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## INFANTS, CHILDREN AND YOUNG PERSONS

ORDERS, CIRCULARS AND MEMORANDA:—

Children and Young Persons (Contributions by Local Authorities) Regulations, 1947 PAGE 325

### ORDERS, CIRCULARS AND MEMORANDA

#### CHILDREN AND YOUNG PERSONS (CONTRIBUTIONS BY LOCAL AUTHORITIES) REGULATIONS, 1947

*S. R. & O.*, 1947, No. 429

March 12, 1947

In pursuance of the power conferred upon me by subsection (1) of section 90 of the Children and Young Persons Act, 1933, I, the Right Honourable

James Chuter Ede, one of His Majesty's Principal Secretaries of State, hereby make the following Regulations :—

1. The contributions to be made by the local authority named in an approved school order to the expenses of the managers of an approved school throughout the time during which the person to whom the order relates is under the care of the said managers and not out on licence or under supervision shall be at the rate of thirty-five shillings a week :

Provided that this Regulation shall not apply to a local authority named in an approved school order where the managers having under their care the person to whom the order relates are that local authority or a joint committee upon which that local authority is represented. [1001]

2. The Interpretation Act, 1889, shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament. [1002]

3.—(1) These Regulations may be cited as the Children and Young Persons (Contributions by Local Authorities) Regulations, 1947.

(2) These Regulations shall come into force on the first day of April, 1947.

(3) The Children and Young Persons (Contributions by Local Authorities) Regulations, 1946, are hereby revoked. [1003]

\* \* \* \* \*

## INTOXICATING LIQUORS

CASES :—	PAGE	PAGE
Fussell v. Somerset Licensing Committee JJ., [1947] 1 All E. R. 44 — — — — —	326	R. v. Royal Leamington Spa Licensing JJ., <i>Ex parte</i> Pinnington, [1947] 1 All E. R. 114 — — 327

### CASES

*Licensing—General annual licensing meeting—Application for new licence—Bench equally divided—Adjournment of meeting—Application granted at adjourned meeting—Confirming authority—Jurisdiction to confirm licence.*

On March 1, 1946, the appellant applied to the adjourned general annual licensing meeting of the licensing justices for the petty sessional division of Keynsham for a new licence. The bench consisted of six justices, and after they had conferred the chairman said : “ The bench being equally divided on this application, no order is made, and the case will be reheard ‘ by a reconstituted bench.’ ” The adjourned general licensing meeting is further adjourned until March 22, 1946.” On March 22 the justices held a further adjourned meeting, when eleven justices sat and granted the application. When the matter came before the confirming authority, objection was taken on behalf of certain local residents that the matter was not properly before the authority, it being contended that what happened on March 1, when the bench was equally divided, amounted to a decision, and that, therefore, the licence had been refused. The confirming authority upheld the objection, deciding that the application for confirmation of the licence was not properly before them, and refused to adjudicate on the matter. The appellant appealed :—

*Held* : that, although the justices might have refused the application on the ground that the bench was equally divided, they did not do so, but did what they were equally entitled to, namely, adjourn the application. The application having been granted at the adjourned hearing, the matter was

properly before the confirming authority, and the case must be remitted to them with a direction to adjudicate on it.—*FUSSELL v. SOMERSET LICENSING COMMITTEE JJ.*, [1947] K. B. 276; [1947] 1 All E. R. 44; [1947] L. J. R. 274; 176 L. T. 304; 111 J. P. 45; 63 T. L. R. 23; 91 Sol. Jo. 100; 45 L. G. R. 23, D. C. [1004]

*Intoxicating liquors—Licensing—Ordinary removal of licence—Removal from county licensing division to borough within same county—Jurisdiction of borough justices to hear the application—Licensing (Consolidation) Act, 1910 (c. 24), s. 24 (3).*

The licensee of premises situated at N., in the county of W., applied to the justices for the borough of L., which was within the same county, for an order authorising the ordinary removal of his licence to premises within that borough. N. was in a county licensing district and L. was a borough having a separate commission of the peace, and was, accordingly, a licensing district within the Licensing (Consolidation) Act, 1910, s. 2 :—

*Held*: s. 24 (3) of the Act gave justices power to remove a licence from premises situated in one licensing district to premises in another licensing district provided that both districts were within the same county, and, therefore, the justices in the present case had power to authorise the removal of the licence.—*R. v. ROYAL LEAMINGTON SPA LICENSING JJ., Ex parte PINNINGTON*, [1947] K. B. 328; [1947] 1 All E. R. 114; [1947] L. J. R. 638; 176 L. T. 324; 111 J. P. 40; 63 T. L. R. 29; 91 Sol. Jo. 131; 45 L. G. R. 25, D. C. [1005]

## JURORS AND JURY LISTS

CASES :—

Perrins v. Pye, [1947] 1 All E. R. 872 - - - - - PAGE 327

### CASES

*Juries—Qualification—Householder—Rateable value—Aggregation of properties—Juries Act, 1825 (c. 50), s. 1.*

In considering the qualification of a householder for jury service under s. 1 of the Juries Act, 1825, the rateable value taken into account in accordance with the section must be that of the house of which he is the holder. It is not permissible, where the householder also occupies another property, e.g. a shop, to aggregate the value of the two properties.—*PERRINS v. PYE*, [1947] K. B. 749; [1947] 1 All E. R. 872; 177 L. T. 174; 111 J. P. 341; 63 T. L. R. 387; 91 Sol. Jo. 410; 45 L. G. R. 355. [1006]

## LAND, ACQUISITION, SALE, ETC., OF

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## STATUTES

## TOWN AND COUNTRY PLANNING ACT, 1947

(10 &amp; 11 Geo. 6, c. 51)

## PRELIMINARY NOTE

Part V of the Town and Country Planning Act, 1947, with which this Note is concerned, is not restricted to the subject of planning proper, but amends the general law as to compensation on the compulsory acquisition of land by public authorities.

This Part of the Act, which extends only to England and Wales (s. 120 (3), (4)), came into operation on August 6, 1947, the date on which the Act received the Royal Assent (s. 120 (2), proviso (c)). The remainder of the Act, with the small exceptions specified in s. 120 (2), provisos (a), (b) and (c), is not to come into operation until the "appointed day," that is, July 1, 1948, the day appointed by the Minister of Town and Country Planning in exercise of his powers under s. 119 of the Act (Town and Country Planning Act, 1947 (Appointed Day) Order, 1948, S.I. 1948 No. 213, dated February 9, 1948).

The provisions of Part V are seen most clearly in the context of Part II of the Town and Country Planning Act, 1944 (37 Halsbury's Statutes 476 *et seq.*), which provided in substance that, where notice to treat was served on or after November 17, 1944, the compensation payable, *inter alia*, in respect of the compulsory purchase of land should be ascertained by reference to prices current at March 31, 1939. In addition, owner-occupiers of buildings were to be entitled to a reasonable supplement which, in the case of freeholders, was to be 30 per cent. of that value; this supplement, commonly known as "the owner-occupier supplement," was increased to 60 per cent. by the Acquisition of Land (Increase of Supplement) Order, 1946, S. R. & O., 1946, No. 1163 (39 Halsbury's Statutes 692). Special provision was made by Part II of the 1944 Act as to agricultural property, and a supplement was to be payable where either (a) new buildings had been erected, or (b) existing buildings had been improved, or (c) improvements had been made to agricultural land after March 31, 1939, but before service of the notice to treat, the amount of the supplement being based upon prices current at March 31, 1939.

Further provisions of the said Part II included details as to the assessment of compensation on the compulsory purchase of land valued under the War Damage Act, 1943 (36 Halsbury's Statutes 334). Power to pay interest at 4 per cent., or such other rate as might be prescribed by Treasury regulations, was substituted for the provision of the Lands Clauses Consolidation Act, 1845, s. 85 (2 Halsbury's Statutes 1142) requiring payment at 5 per cent. The rate of interest was reduced from 4 to 3½ per cent. as from May 1, 1947, by the Acquisition of Land (Rate of Interest on Entry) Regulations, 1947 (S. R. & O., 1947, No. 791), *post*.

As will be seen from the title TOWN AND COUNTRY PLANNING, *post*, the remainder of the present Act virtually takes away from owners the right to develop their land except with permission and on payment of such development charge as may be determined by the Central Land Board. Consequently, the whole of the land in England and Wales now falls to be valued, with minor reservations, on the basis of its present use.

In this context, apart from any intrinsic merit or demerit of Part II of the 1944 Act, the provisions of that Part required modification and Part V of the present Act lays down new rules to bring the position as to compensation on compulsory purchase into line with the rest of the statute. Accordingly, Part II of the 1944 Act is repealed as from the passing of the present Act (ss. 113, 120 and Sched. IX, Part I; see title TOWN AND COUNTRY PLANNING, *post*).

S. 50 (1) of the present Act provides that the provisions of the 1944 Act requiring compensation to be ascertained by reference to 1939 prices ("the 1939 standard") are not to apply to cases of compulsory acquisition where notice to treat was served on or after August 6, 1947, the date of passing of the Act.

Next, s. 50 (2), by applying retrospectively the provisions of Sched. VII to the present Act, is designed to eliminate an overlap between the "owner-occupier supplement" mentioned above and the increase in converted value payments under the War Damage Act, 1943 (36 Halsbury's Statutes 334). In addition to cases of compulsory acquisition, the provisions of Sched. VII are also applied to

cases of acquisition by agreement by authorities having power to acquire compulsorily.

Having cleared away these preliminaries, the legislature then proceeds to apply the logical corollary to the provisions of the Act restricting the future use of land by providing that, where land has been acquired compulsorily by a government department or local or public authority in pursuance of a notice to treat served on or after the appointed day, the value of the land for purposes of compensation is to be ascertained on the assumption that planning permission would be granted for the minor classes of development specified in Sched. III to the Act, but would not be granted for any other type of development (s. 51 (2)). This assumption is to be made even in cases where permission for other development has been granted before service of the notice to treat (s. 51 (4)). In other words, no compensation is to be payable for development rights which an owner no longer possesses, and values will be ascertained on an "existing use" basis.

As a subsidiary to the preceding section, s. 52 seeks to prevent owners of interests in land from obtaining special values through being able to give immediate or early vacant possession in present abnormal circumstances, their interests being valued as if there were derived therefrom leases of the land for terms beginning on the date of the notice to treat and ending on January 1, 1954 (s. 52 (1), (2)). There is, however, a proviso to the latter subsection to the effect that (a) where the interest is subject to an actual lease, the "notional term" is to be deemed to begin on the first day after service of the notice to treat on which the owner of the interest would be entitled to vacant possession of the land; and (b) where the interest is a leasehold interest due to expire before January 1, 1954, the "notional term" is to be deemed to end on the day before the expiry of the lease.

Again subject to the general principle laid down, special provision is made for two cases where difficulty might otherwise arise in applying that principle: these are the cases of war-damaged land and requisitioned land. Where war-damaged land is the subject of a converted value payment, s. 53 (1) directs that the value of the land for present purposes is to be the value it would have had if the damage had been made good before the date of the notice to treat, the right to any value payment under the War Damage Act, 1943 (36 Halsbury's Statutes 334) vesting in the authority acquiring the land.

In the case of requisitioned land, on the other hand, compensation is, by s. 54, to be assessed as if the land were not requisitioned and, in addition, as if the interest in question carried the right to vacant possession (or the right to obtain such possession before January 1, 1954) if it would have carried that right had the land not been requisitioned. The same section makes detailed provision for other special cases of requisitioned land being acquired compulsorily.

The Act next proceeds to provide for what may be termed "interim cases"—cases where notice to treat is served after the passing of the Act, but before the appointed day. In such circumstances the general principles of the foregoing sections are to apply, values being ascertained on an "existing use" basis by reference to prices current immediately before the Act, as a Bill, was introduced in Parliament. In addition, special rules are laid down by s. 56 to meet cases where notice to treat is served on or after August 6, 1947, for the acquisition of war-damaged land which, but for the war damage, would be subject to r. 5 of the Acquisition of Land (Assessment of Compensation) Act, 1919, s. 2 (2 Halsbury's Statutes 1178).

The net result of the provisions as to compensation where land is acquired compulsorily (other than the provisions to meet special cases) can be seen from the following table:—

- |   |  |
|---|--|
| (a) Notice to treat served before the passing of the Act; acquisition completed between the passing of the Act and the appointed day, July 1, 1948: | Old basis. No payment to vendor for depreciation in the value of the land under Part VI of the Act (s. 91 (1); see title TOWN AND COUNTRY PLANNING, <i>post</i> ). |
| (b) Notice to treat served before the passing of the Act; acquisition completed after the appointed day:  | The same.  |

(c) Notice to treat served between the passing of the Act and the appointed day; acquisition completed between the passing of the Act and the appointed day:

(d) Notice to treat served between the passing of the Act and the appointed day; acquisition completed after the appointed day:

(e) Notice to treat served after the appointed day:

New basis, by reference to prices current immediately before January 7, 1947. The right to receive payment (if any) for depreciation in the value of the land under Part VI of the Act vests in the vendor (see ss. 50 (1) and 55; and, under title TOWN AND COUNTRY PLANNING, *post*, ss. 91 and 64).

The same.

New basis, by reference to prices current at the date of the notice to treat; the right to receive payment (if any) for depreciation in the value of the land under Part VI of the Act vests in the vendor (see ss. 50 (1) and 51; and, under title TOWN AND COUNTRY PLANNING, *post*, s. 64).

The provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919 (2 Halsbury's Statutes 1176), are to apply to acquisitions by the Central Land Board and any statutory undertakers (s. 57).

Finally, s. 57 (2) and (3), relate to the payment of interest: the rate payable between entry and the actual payment on completion is to remain the subject of Treasury regulation, the Acquisition of Land (Rate of Interest on Entry) Regulations, 1947 (S. R. & O., 1947, No. 791), *post*, being continued in force. The rate of interest prescribed by these regulations as from May 1, 1947 ( $3\frac{1}{2}$  per cent.) therefore continues to apply.

For the convenience of readers, the relevant parts of the Interpretation Section (s. 119) and the whole of s. 120, giving the short title, commencement and extent of the Act, are included in this title along with the relevant Scheds. III and VII.

It may be useful to note that on June 23, 1947, some weeks before the Bill became law, the Ministry of Health issued Circular 108/47 detailing the effect of the provisions here discussed, as they appeared in the Bill, on the transactions of local and public authorities. Again, on October 23, 1947, the Ministry of Town and Country Planning issued cyclostyled "Notes for the guidance of buyers and sellers of land for development purposes in the period between the passing of the Act and the Appointed Day" (P.R. 1). [1007]

## ARRANGEMENT OF SECTIONS

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### PART V

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## PART X

## SUPPLEMENTAL

\*                      \*                      \*                      \*                      \*

*General Provisions*

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\*                      \*                      \*                      \*                      \*

*An Act to make fresh provision for planning the development and use of land, for the grant of permission to develop land and for other powers of control over the use of land; to confer on public authorities additional powers in respect of the acquisition and development of land for planning and other purposes, and to amend the law relating to compensation in respect of the compulsory acquisition of land; to provide for payments out of central funds in respect of depreciation occasioned by planning restrictions; to secure the recovery for the benefit of the community of development charges in respect of certain new development; to provide for the payment of grants out of central funds in respect of expenses of local authorities in connection with the matters aforesaid; and for purposes connected with the matters aforesaid. [1008] [6th August, 1947.]*

\*                      \*                      \*                      \*                      \*

## PART V

## AMENDMENTS OF LAW RELATING TO COMPENSATION ON COMPULSORY ACQUISITION OF LAND

**50. Abolition of the 1939 standard for compensation on compulsory acquisition.**—(1) Section fifty-seven of the Act of 1944 (which provides for the assessment by reference to the prices current in 1939 of the value of interests in land which are compulsorily acquired) shall not apply to compensation in respect of a compulsory acquisition of land in pursuance of a notice to treat served after the passing of this Act. [1009]

(2) The provisions of the Seventh Schedule to this Act shall have effect and shall be deemed always to have had effect in relation to land compulsorily acquired in pursuance of a notice to treat served after the commencement of the Act of 1944 and before the passing of this Act, and in relation to land acquired by agreement during that period by an authority authorised to acquire it compulsorily. [1010]

*Effect of section.*—Sub-s. (1) of this section abolishes the 1939 standard for compensation on compulsory acquisition where notice to treat is served after the passing of the present Act. Sched. IX, Part I, repeals ss. 57–62 of the Town and Country Planning Act, 1944 (37 Halsbury's Statutes 476 *et seq.*), as from the passing of the present Act. Note the special provisions in s. 55, *post*, where notice to treat is served after the passing of the present Act and before the appointed day, July 1, 1948 (see S.I. 1948 No. 213).



The abolition of the 1939 standard will not, however, result in the owner obtaining the full or ordinary market value of his land: the next two sections enact provisions which will in most cases considerably reduce this value.

Sub-s. (2), *ante*, brings into operation the provisions of Sched. VII, *post*, where notice to treat has been served or land has been acquired by agreement after the commencement of the 1944 Act and before the passing of the present Act.

*Act of 1944, s. 57.*—The Town and Country Planning Act, 1944, s. 57; 37 Halsbury's Statutes 476.

*Notice to treat.*—See s. 18 of the Lands Clauses Consolidation Act, 1845 (2 Halsbury's Statutes 1120), incorporated in the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Halsbury's Statutes 52).

*Commencement of the Act of 1944.*—November 17, 1944.

*Definition.*—For the definition of "land," see s. 119 (1), *post*. Provisions as to notices to treat and compensation are contained in sub-ss. (3) and (4) respectively of the same section, *post*.

### 51. Compensation for compulsory acquisition after appointed day.—

(1) Any compensation payable in respect of the compulsory acquisition of an interest in land by a government department or a local or public authority within the meaning of the Acquisition of Land (Assessment of Compensation) Act, 1919, in pursuance of a notice to treat served on or after the appointed day (not being compensation which falls to be assessed in accordance with Rule (5) of the rules set out in section two of that Act) shall be assessed in accordance with the provisions of that Act as modified by the provisions of this and the three next following sections. [1011]

(2) The value of any such interest shall be ascertained on the assumption that planning permission would be granted under Part III of this Act for development of any class specified in the Third Schedule to this Act; but would not be so granted for any other development :

Provided that

(a) where at any time before the date of the notice to treat permission for development of the land of any class specified in Part II of the said Third Schedule has been refused or granted subject to conditions, or, having been granted, has been revoked or modified by the imposition of conditions, and compensation has become payable in respect of the refusal, revocation, or conditions, as the case may be, under section twenty of this Act, it shall be assumed for the purposes of the ascertainment of the value of the interest in question that such permission would not be granted, or, as the case may be, would not be granted otherwise than subject to those conditions ;

(b) where at any time before the said date an order has been made under section twenty-six of this Act requiring the removal of any building or the discontinuance of any use, and compensation has become payable in respect of that order under section twenty-seven of this Act, it shall be assumed for the purposes aforesaid that planning permission would not be granted for the rebuilding of that building or the resumption of that use. [1012]

(3) Without prejudice to any rule of law affecting the assessment of compensation in respect of the compulsory acquisition of land in pursuance of any enactment, no account shall be taken, in calculating the value of an interest in land designated by a development plan under this Act as subject to compulsory acquisition, of any depreciation in the value of that interest which is attributable to the designation. [1013]

(4) Where, at any time before the date of the notice to treat, planning permission has been granted under Part III of this Act for any development of the land, other than development of any class specified in the Third Schedule to this Act, or is deemed to have been so granted, then except where either—

(a) any sum has been paid under Part VII of this Act by way of development charge in respect of that development ; or

(b) no such charge is payable in respect of that development by virtue of the provisions of Part VIII of this Act ;

the value of the interest to which the notice to treat relates shall be calculated as if that permission had not been granted. [1014]

(5) Where the interest is acquired in pursuance of a purchase notice served under section nineteen of this Act, and it is certified by the Minister, on confirming the notice, that any building comprised in the land has become incapable of reasonably beneficial use, then if the purchase notice was served in consequence of the refusal of permission for development which would have involved the demolition of the whole or substantially the whole of the building, or in consequence of the revocation or modification of such permission, no account shall be taken for the purposes of this section of the value of the building except in so far as the value of any materials therein would exceed the cost of demolition. [1015]

(6) Where the interest is acquired in pursuance of a purchase notice served under the said section nineteen and directions have been given under paragraph (b) of subsection (2) of that section requiring that planning permission shall be granted for any development of other land to which the purchase notice relates, no account shall be taken for the purposes of this section of any increase or diminution in the value of the said interest which is attributable to the direction or to any permission granted in pursuance thereof. [1016]

*Effect of section.*—As a result of the provisions of the Act, the right to carry out development within the meaning of the Act is lost. The right to carry out certain specified development may be regained by applying for and obtaining permission (either conditional or unconditional) under Part III of the Act and paying a development charge under Part VII (see title TOWN AND COUNTRY PLANNING, *post*). The legislature has recognised, however, that there is certain development which normally it would be unreasonable not to allow and on which it would be unreasonable to levy a development charge: this type of development is described in Sched. III, *post*.

By sub-s. (2) of this section it is enacted that in assessing compensation it shall be assumed that permission would be granted under Part III of the Act for any class of development mentioned in Sched. III, but not for any other development. Thus, the basis of compensation in a normal case will be equivalent to the existing use value *plus* any further value due to the tolerance permitted by Sched. III. But see the provision for a "reduction factor" made by the next section. The provisos deal with special cases which form an exception to this general rule. The necessity for making these exceptions will be obvious.

The fact that land is designated in a development plan for compulsory acquisition would probably make it difficult to sell the land and so depreciate its ordinary market value calculated on the assumption mentioned in sub-s. (2), *ante*. Sub-s. (3), *ante*, accordingly provides that no account is to be taken of this depreciation.

The purport of sub-s. (4), *ante*, will be clear once the general principle stated in the first paragraph of this note has been grasped. If the right to develop in a certain way has been obtained, nothing is to be paid in respect of this right, unless the development charge has been paid. But there may be cases in which permission is granted and no charge is payable by virtue of the provisions of Part VII of the Act (see title TOWN AND COUNTRY PLANNING, *post*); in such event if the permission enhances the value of the land, then the owner gets the benefit of the enhanced value.

*Acquisition of Land (Assessment of Compensation) Act, 1919.*—2 Halsbury's Statutes 1176.

*Appointed day.*—July 1, 1948; see the Preliminary Note, *ante*.

*Part III of this Act.*—See title TOWN AND COUNTRY PLANNING, *post*. This Part of the Act, comprising ss. 12-36 (inclusive), deals with the control of development and, in particular, the obligation to obtain permission before land is developed.

*Ss. 26 and 27 of this Act.*—See title TOWN AND COUNTRY PLANNING, *post*. S. 26 authorises local planning authorities, in the interests of proper planning, to order the discontinuance of particular uses of land or the imposition of conditions on their continuance or the alteration or removal of buildings or works. S. 27 provides, *inter alia*, for payment of compensation in such cases.

*Part VII of this Act.*—See title TOWN AND COUNTRY PLANNING, *post*. This Part of the Act, comprising ss. 69-74 (inclusive), deals with the imposition of development charges in respect of certain development.

*Part VIII of this Act.*—See title TOWN AND COUNTRY PLANNING, *post*. This Part of the Act, comprising ss. 75-92 (inclusive), applies the general principles of the Act to a number of miscellaneous circumstances comprising special cases.

*S. 19 of this Act.*—See title TOWN AND COUNTRY PLANNING, *post*. This section provides machinery whereby owners who have been refused permission to develop their land may in stated circumstances serve notice on the local county borough council or county district council requiring the council to purchase their interests in the land.

Sub-s. (2) (b) of that section allows the Minister, instead of confirming a purchase notice, to direct that permission for other development shall, in certain cases, be granted in the event of application being made.

*The Minister.*—The Minister of Town and Country Planning.

*Definitions.*—As to "development plan," see ss. 5 and 119 (1); as to "development," see

ss. 12 and 119 (1); and as to "purchase notice," see ss. 19 and 119 (1). For definitions of "land," "government department," "local authority," "appointed day," "building," "use" and "enactment," see s. 119 (1), *post*. Provisions as to the service of notices to treat are contained in s. 119 (3), *post*.

**52. Temporary provisions for eliminating special value attributable to vacant possession.**—(1) Where the notice to treat giving rise to the claim for compensation is served at any time before the first day of January, nineteen hundred and fifty-four, and the interest in land in respect of which the compensation is payable carries the right to vacant possession of the land or any part thereof, or the right to obtain such possession at any time before that date, then unless the land is agricultural property within the meaning of this section, the value of that interest shall be calculated as if there were derived therefrom a lease of the land, or of that part thereof, as the case may be, for the term, subject to the conditions and at the rent specified in this section. [1017]

(2) The term of any such lease as aforesaid shall be deemed to be a term beginning on the date of the notice to treat and ending on the first day of January, nineteen hundred and fifty-four :

Provided that—

- (a) where the interest in question is subject to an actual lease on the date of the service of the notice to treat, the said term shall be deemed to begin on the first date thereafter on which the owner of the said interest would be lawfully entitled to obtain vacant possession of the land ; and
- (b) where the interest in question is a leasehold interest which is limited to expire at any time before the first day of January, nineteen hundred and fifty-four, the said term shall be deemed to end on the day before the expiration of that interest. [1018]

(3) The conditions of any such lease as aforesaid shall be deemed to be conditions by virtue of which the tenant would be liable to pay all usual tenant's rates and taxes and to bear the cost of repairs and insurance and other expenses, if any, necessary to maintain the land in the state in which it was on the date of the notice to treat ; and the rent payable thereunder shall be deemed to be a sum equal to five per cent. of the capital value of the premises, or a sum equal to the rent which might reasonably be expected to be payable by a tenant in occupation of the premises, under a lease for the term and subject to the conditions aforesaid, whichever is the less. [1019]

(4) In this section the expression "agricultural property" means agricultural land or agricultural buildings as defined by the Rating and Valuation (Apportionment) Act, 1928, and includes a house used as a dwellinghouse by a person who is primarily engaged in carrying out or directing agricultural operations on land in the neighbourhood of the house ; and for the purposes of this section the capital value of any premises shall be deemed to be the value of a freehold interest therein (free from incumbrances but subject to any easement or other restriction affecting the land on the date of the notice to treat) calculated in accordance with the provisions of any enactment other than this section which would apply to the assessment of compensation on a compulsory acquisition thereof by a government department or a local or public authority within the meaning of the Acquisition of Land (Assessment of Compensation) Act, 1919. [1020]

(5) For the purposes of this section, an interest in land shall not be deemed to carry the right to obtain vacant possession of the land or any part thereof if at the time of the service of the notice to treat the land or that part thereof consists of a dwellinghouse which is subject to the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939, or any future enactment amending or extending those Acts, and any person other than the person entitled to that interest

is for the time being in possession thereof either by virtue of a tenancy or by virtue of the provisions of the said Acts. [1021]

(6) Compensation for disturbance in respect of an interest in land the value of which is calculated in accordance with the provisions of this section shall not be assessed at any greater or less amount than that at which it would have been assessed apart from the provisions of this section. [1022]

*Effect of section.*—The object of this provision is to prevent the owner of an interest in land from obtaining the high values due to the prevailing shortage of accommodation. The section provides that if the interest to be acquired carries the right to immediate or early vacant possession, then, except in the case of (a) agricultural property, and (b) property let on terms governed by the Rent Restrictions Acts, it will be valued as if it were subject to a lease terminating on January 1, 1954. If there is an active lease expiring before that date the notional lease will be held to cover the subsequent period to that date.

Where the Rent Restrictions Acts apply, there is no need for any further reduction factor; these Acts themselves depreciate the value of the property by restricting the right to vacant possession.

*Notice to treat.*—See note to s. 50, *ante*.

*Notice to treat is served.*—This includes constructive service (see s. 119 (3), *post*).

*Compensation.*—Note that, by s. 119 (4), *post*, compensation includes loss or damage through severance or disturbance.

*Agricultural land and agricultural buildings.*—These terms are defined by s. 2 (2) of the Rating and Valuation (Apportionment) Act, 1928 (14 Halsbury's Statutes 714 *et seq.*), as follows:—

“ ‘Agricultural land’ means any land used as arable meadow or pasture ground only, land used for a plantation or a wood or for the growth of saleable underwood, land exceeding one quarter of an acre used for the purpose of poultry farming, cottage gardens exceeding one quarter of an acre, market gardens, nursery grounds, orchards or allotments, including allotment gardens within the meaning of the Allotments Act, 1922, but does not include land occupied together with a house as a park, gardens (other than as aforesaid) pleasure grounds, or land kept or preserved mainly or exclusively for purposes of sport or recreation, or land owned as a race-course; and for the purpose of this definition the expression ‘cottage garden’ means a garden attached to a house occupied as a dwelling by a person of the labouring classes.”

“ ‘Agricultural buildings’ means buildings (other than dwelling houses) occupied together with agricultural land or being or forming part of a market garden, and in either case used solely in connection with agricultural operations thereon.”

The Allotments Act, 1922, s. 22 (1) (1 Halsbury's Statutes 315), defines an allotment garden and “an allotment not exceeding forty poles in extent which is wholly or mainly cultivated by the occupier for the production of vegetable or fruit crops for consumption by himself or his family.”

Glass-houses in or on a market garden have been held to be agricultural buildings, not land (*Smith v. Richmond*, [1899] A. C. 448). See, further, *Purser v. Worthing Local Board of Health* (1887), 18 Q. B. D. 818.

*Acquisition of Land (Assessment of Compensation) Act, 1919.*—2 Halsbury's Statutes 1176.

*Rent and Mortgage Interest Restrictions Acts, 1920 to 1939.*—These are the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (10 Halsbury's Statutes 332); the Rent Restrictions (Notices of Increase) Act, 1923 (10 Halsbury's Statutes 361); the Rent and Mortgage Interest Restrictions Act, 1923 (10 Halsbury's Statutes 365); the Prevention of Eviction Act, 1924 (10 Halsbury's Statutes 373); the Rent and Mortgage Interest (Restrictions Continuation) Act, 1925 (10 Halsbury's Statutes 374); the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933 (26 Halsbury's Statutes 266); the Increase of Rent and Mortgage Interest (Restrictions) Act, 1938 (31 Halsbury's Statutes 387); and the Rent and Mortgage Interest Restrictions Act, 1939 (32 Halsbury's Statutes 971).

*Definitions.*—For definitions of “land,” “lease,” “agricultural” (as in “agricultural operations”), “enactment,” “government department” and “local authority,” see s. 119 (1), *post*.

**53. Compensation for compulsory acquisition of land attracting converted value payments.**—(1) Where an interest in land the value of which is to be ascertained in accordance with the provisions of section fifty-one of this Act is an interest in a hereditament or part of a hereditament which has sustained war damage, and any of that damage has not been made good at the date of the notice to treat, then if the appropriate payment under the War Damage Act, 1943, would, apart from the compulsory purchase or apart from any direction given by the Treasury under paragraph (b) of subsection (2) of section twenty of that Act, be a payment of cost of works—

(a) the value of the interest for the purposes of the compensation payable in respect of the compulsory purchase shall, subject to the provisions of this section, be taken to be the value which it would have if the whole of the damage had been made good before the date of the notice to treat; and

- (b) the right to receive any value payment or share of a value payment which, under the War Damage Act, 1943, is payable in respect of the interest which is compulsorily acquired (including any interest payable thereon) shall, notwithstanding anything in that Act, vest in the person by whom the interest is so acquired. [1023]

(2) Where, under subsection (1) of this section, the value of any interest in land comprised in a hereditament is required to be taken to be the value which that interest would have if war damage sustained by that hereditament had been made good before the date of the notice to treat, and any works, other than works for making good the war damage, have been carried out on the land since the occurrence of the war damage, then if the making good of the war damage would involve the removal of those works, the value of the said interest shall be taken to be—

- (a) the value which it would have if the war damage had been made good and those works had been removed ; or  
 (b) the value which it would have if the war damage had not been made good so far as the making good would have involved the removal of those works,

whichever is the higher. [1024]

(3) Where an interest in land is acquired by agreement in pursuance of a contract made after the appointed day by a person authorised by virtue of any enactment to acquire it compulsorily, being an interest in a hereditament or part of a hereditament which has sustained war damage any of which has not been made good before the date of the contract, then if the appropriate payment under the War Damage Act, 1943, would, apart from the acquisition or apart from any direction given by the Treasury under paragraph (b) of subsection (2) of section twenty of that Act be a payment of cost of works, the right to receive any value payment or share of the value payment which, under that Act, is payable in respect of the interest so acquired (including any interest payable thereon) shall, notwithstanding anything in that Act, vest in the person by whom the interest is acquired as aforesaid. [1025]

(4) Where, by virtue of paragraph (b) of subsection (1) of this section or of the last foregoing subsection, the right to receive a value payment or share of a value payment becomes vested in the person by whom an interest in land is acquired, whether compulsorily or by agreement, the amount of that payment or share (including any interest thereon) shall not exceed the sum paid by that person by way of compensation or consideration in respect of the interest so acquired. [1026]

(5) Subsection (4) of section sixty-nine of the War Damage Act, 1943 (which makes special provision with respect to payments under that Act in respect of war damage sustained by hereditaments held for charitable purposes) shall not apply to any payment which, by virtue of this section, vests in the person by whom an interest in land is acquired. [1027]

*Effect of section.*—This section applies where (a) the value of an interest in land falls to be ascertained in accordance with s. 51, *ante* ; and (b) it is a hereditament which has sustained war damage ; and (c) any of that damage has not been made good at the date of the notice to treat ; and (d) the appropriate payment under the War Damage Act, 1943 (36 Halsbury's Statutes 334), would apart from the compulsory purchase or any direction given by the Treasury under s. 20 (2) (b) of the War Damage Act, 1943, be a cost of works payment.

If the above conditions are satisfied then the compensation for compulsory purchase will be assessed as though the damage had been made good before the date of the notice to treat. The converted value payment, plus the increase of 60 per cent. allowed by the War Damage (Increase of Value Payments) Order, 1947 (S. R. & O., 1947, No. 390 ; see title AIR-RAID PRECAUTIONS, *ante*), and interest from the date of the damage, will be diverted to the acquiring authority who will be able to recover it from the War Damage Commission.

In the case of property attracting an original value payment, the compensation will be based on the value of the property in its actual state at the date of the notice to treat.

*Appointed day.*—July 1, 1948 ; see the Preliminary Note, *ante*.  
*War Damage Act, 1943.*—36 Halsbury's Statutes 334. This, the principal Act relating to war damage, was a consolidation of the War Damage Act, 1941 (34 Halsbury's Statutes 450),

the War Damage (Amendment) Act, 1942 (35 Halsbury's Statutes 275), and the War Damage (Amendment) Act, 1943 (36 Halsbury's Statutes 331) which with minor exceptions were repealed on its passing.

The term "war damage" is defined by s. 2 of the War Damage Act, 1943, and this definition is applied to the present Act by s. 119 (1), *post*. "Hereditament" is defined by s. 5 of the Act of 1943.

As to cost of works and value payments, see ss. 7 *et seq.* of the same Act.

S. 20 (2) (b) of the Act of 1943 empowers the War Damage Commission to make value payments instead of cost of works payments where Treasury directions require that damage is not to be made good.

For s. 69 (4) of the Act of 1943, see 36 Halsbury's Statutes 395.

*Definitions.*—For definitions of "land," "appointed day" and "enactment," see s. 119 (1), *post*. Sub-s. (2) of the same section, *post*, contains provisions as to the service of notices to treat, and the following subsection deals with the construction of the term "compensation."

#### 54. Compensation for compulsory acquisition of requisitioned land.—

(1) Except as otherwise provided by this section and Part VIII of the Requisitioned Land and War Works Act, 1945, the value of any interest in requisitioned land shall be assessed in accordance with the foregoing provisions of this Part of this Act as if the land were not requisitioned land; and in particular an interest in such land shall be deemed for the purposes of section fifty-two of this Act to carry the right to vacant possession of the land or the right to obtain such possession before the first day of January, nineteen hundred and fifty-four, if it would carry that right if the land were not requisitioned land. [1028]

(2) Where an interest in land the value of which falls to be ascertained in accordance with the foregoing provisions of this Part of this Act is acquired compulsorily in such circumstances that Part VIII of the Requisitioned Land and War Works Act, 1945, applies to the acquisition, then—

- (a) if the land is requisitioned land and the period of requisition had begun before the appointed day, subsection (2) of section fifty-one of this Act shall have effect as if for any reference to the appointed day in the Third Schedule to this Act there were substituted a reference to the beginning of the period of requisition;
- (b) where section fifty-three of this Act applies, the provisions of that section shall have effect in substitution for the provisions of section forty-one of the Requisitioned Land and War Works Act, 1945, so far as it relates to the war damage and to any work done for the making good of the war damage:

Provided that for the purposes of subsection (2) of the said section fifty-three no account shall be taken of any such works as are mentioned in paragraph (b) of subsection (1) of the said section forty-one. [1029]

(3) Where, by virtue of paragraph (a) of the last foregoing subsection, the Third Schedule to this Act applies in relation to the assessment of compensation for the compulsory acquisition of an interest in land being requisitioned land as if the beginning of the period of requisition were substituted therein for the appointed day, then if any buildings or works have been erected or constructed on the land during the period of requisition, and either—

- (a) a payment in respect of the value of those buildings or works has been made by any person interested in the land to a Minister under Part II of the Requisitioned Land and War Works Act, 1945, in pursuance of a report of the War Works Commission thereunder; or
- (b) any such payment or other consideration has been or is required to be made or given by any such person to a Minister in pursuance of an agreement between them; or
- (c) the buildings or works were otherwise erected or constructed wholly or partly at the expense of any such person,

those buildings or works shall be treated for the purposes of the said Third Schedule as having been erected or constructed immediately before the beginning of the period of requisition. [1030]



*Effect of section.*—Requisitioned land is to be valued without regard to any diminution in value due to the fact that it is under requisition. For the basis of compensation for requisitioned property with "cost of works" war damage still unrepaired, see s. 53, *ante*.

*Requisitioned Land and War Works Act, 1945, Part VIII.*—38 Halsbury's Statutes 614 *et seq.* This Part deals with the compensation payable on the compulsory acquisition of land under the Act of 1945 and also on certain other purchases by public authorities. The compensation is to be assessed primarily by reference to the condition in which the land was before the erection of buildings or the doing of work by the authority concerned.

For s. 41 of the Act of 1945 (the principal section in Part VIII), see 38 Halsbury's Statutes 614, and for Part II of that Act, see 38 Halsbury's Statutes 586 *et seq.*

*Requisitioned land.*—Note that this term is not defined by reference to other legislation but, with "period of requisition," is independently defined by s. 89 (3) (see title TOWN AND COUNTRY PLANNING, *post*), for the purposes of that section, the definitions there given being applied to the Act as a whole by s. 119 (1), *post*.

*Appointed day.*—July 1, 1948; see the Preliminary Note, *ante*.

*Works mentioned in s. 41 (1) (b) of the Act of 1945.*—"Any work done at any time since the beginning of the war period on the land acquired or any contiguous or adjacent land by or by arrangement with a Minister or the acquiring authority or combination of authorities or in the exercise of emergency powers" (38 Halsbury's Statutes 614).

*Definitions.*—For definitions of "land," "appointed day," "war damage," "buildings or works," "erection" and "a Minister," see s. 119 (1), *post*.

**55. Compensation for compulsory acquisition after passing of this Act and before appointed day.**—(1) Subject to the provisions of this section, the foregoing provisions of this Part of this Act shall apply in relation to land compulsorily acquired in pursuance of a notice to treat served after the passing of this Act and before the appointed day as they apply in relation to land compulsorily acquired in pursuance of a notice to treat served after the appointed day; and subsections (3) and (4) of section fifty-three of this Act shall apply in relation to land acquired by agreement in pursuance of a contract made after the passing of this Act as they apply in relation to land acquired by agreement in pursuance of a contract made after the appointed day. [1031]

(2) The value of any interest in land which is compulsorily acquired as aforesaid shall be ascertained by reference to prices current immediately before the seventh day of January, nineteen hundred and forty-seven, and for that purpose the interest shall be deemed to have been subsisting immediately before that day subject to all incidents to which it is subject on the date of the notice to treat, and the land shall be deemed to have been immediately before the said seventh day of January in the same state as it is at the date of the notice to treat. [1032]

(3) Subsections (2) to (6) of section fifty-one of this Act shall not apply to any interest in land which is compulsorily acquired as aforesaid, but in calculating the value of any such interest it shall be assumed that the land was, at the time of the notice to treat, subject to a permanent restriction prohibiting the carrying out thereon of any development other than development of the classes specified in the Third Schedule to this Act; and for the purposes of this provision, section twelve of this Act and the said Third Schedule shall have effect as if for the references therein to the appointed day there were substituted references to the date of the notice to treat. [1033]

(4) Nothing in subsection (2) of this section shall be construed as affecting the operation of Part VIII of the Requisitioned Land and War Works Act, 1945, in any case to which that Part applies; and where any land the value of any interest in which falls to be ascertained in accordance with the provision of subsection (3) of this section is requisitioned land—

(a) the Third Schedule to this Act, as applied for the purposes of the said subsection (3), shall have effect as if for the references therein to the appointed day there were substituted references to the beginning of the period of requisition instead of references to the date of the notice to treat; and

(b) subsection (3) of section fifty-four of this Act shall apply as it applies in relation to the assessment of compensation in accordance with paragraph (a) of subsection (2) of that section. [1034]



*Effect of section.*—This section means, in substance, that where notice to treat is served after the passing of the Act and before the appointed day the basis of compensation is to be the same as where notice to treat is served after the appointed day, namely, the restricted market value. One of the modifications is that, instead of the land being valued by reference to prices current at the date of the notice to treat, the value is to be ascertained by reference to prices current at January 7, 1947. For another modification, see sub-s. (3), *ante*, under which the value is to be calculated as if the land were permanently restricted to development of the classes specified in Sched. III, *post*. For development value the owner must rely on s. 91 and Part VI of the Act (see title TOWN AND COUNTRY PLANNING, *post*).

*Notice to treat.*—See s. 18 of the Lands Clauses Consolidation Act, 1845 (2 Halsbury's Statutes 1120); as to the service of notices to treat, see s. 119 (3), *post*.

*Appointed day.*—July 1, 1948; see the Preliminary Note, *ante*.

S. 12 of this Act.—See title TOWN AND COUNTRY PLANNING, *post*. This section requires permission to be obtained in respect of most kinds of development carried out after the appointed day.

*Requisitioned Land and War Works Act, 1945, Part VIII.*—38 Halsbury's Statutes 614 *et seq.* See note to s. 54, *ante*.

*Definitions.*—As to "requisitioned land" and "period of requisition," see s. 89 (3), in title TOWN AND COUNTRY PLANNING, *post*; s. 119 (1), *post*; and note to s. 54, *ante*. For definitions of "land" and "appointed day," see s. 119 (1), *post*.

**56. Special provisions as to war-damaged land where compensation assessed by reference to cost of equivalent reinstatement.**—(1) Where an interest in land which is compulsorily acquired in pursuance of a notice to treat served after the passing of this Act is an interest in a hereditament or part of a hereditament which has sustained war damage, any of which has not been made good at the date of the notice to treat, then if—

- (a) the appropriate payment under the War Damage Act, 1943, would, apart from the compulsory acquisition or apart from any direction given by the Treasury under paragraph (b) of subsection (2) of section twenty of that Act, be a payment of cost of works; and
- (b) the land would, but for the occurrence of that war damage, be devoted to any such purpose as is mentioned in Rule (5) of the rules set out in section two of the Acquisition of Land (Assessment of Compensation) Act, 1919

the provisions of the said Rule (5) shall have effect for the purposes of the assessment of compensation payable in respect of the compulsory acquisition as if the land were so devoted as aforesaid. [1035]

(2) Where any such interest in land as is mentioned in the foregoing subsection is compulsorily acquired as therein mentioned, then if the conditions specified in paragraph (a) of that subsection are satisfied, and the compensation payable in respect of the acquisition falls (whether by virtue of that subsection or otherwise) to be assessed in accordance with the said Rule (5), the reasonable cost of equivalent reinstatement shall be ascertained for the purposes of the said Rule (5) by reference to the state of the land immediately before the occurrence of the war damage, and the right to receive any value payment or share of a value payment which, under the War Damage Act, 1943, is payable in respect of the interest which is compulsorily acquired (including interest thereon) shall, notwithstanding anything in that Act, vest in the person by whom the interest is so acquired. [1036]

(3) Where any such interest in land as aforesaid is acquired by agreement in pursuance of a contract after the passing of this Act by a person authorised by virtue of any enactment to acquire it compulsorily, then if the conditions specified in paragraph (a) of subsection (1) of this section are satisfied in relation to the land, and the compensation which would be payable in respect of the acquisition, if the acquisition were compulsory, would fall (whether by virtue of the said subsection (1) or otherwise) to be assessed in accordance with the said Rule (5), the right to receive any value payment or share of a value payment which, under the War Damage Act, 1943, is payable in respect of the interest acquired (including interest thereon) shall vest in the person by whom the interest is so acquired. [1037]

(4) Subsection (4) of section sixty-nine of the War Damage Act, 1943

(which makes special provision with respect to payments under that Act in respect of war damage sustained by hereditaments held for charitable purposes) shall not apply to any payment which by virtue of this section vests in the person by whom an interest in land is acquired. [1038]

*Notice to treat.*—See note to s. 55, *ante*.

*War Damage Act, 1943.*—36 Halsbury's Statutes 334. The term "war damage" is defined by s. 2 of this Act, the definition being applied to the present Act by s. 119 (1), *post*. "Hereditament" is defined by s. 5 of the Act of 1943. As to cost of works and value payments, see ss. 7 *et seq.* of the same Act.

S. 20 (2) (b) of the Act of 1943 empowers the War Damage Commission to make value payments instead of cost of work payments where Treasury directions require that damage should not be made good.

For s. 69 (4) of the Act of 1943, see 36 Halsbury's Statutes 395.

*Acquisition of Land (Assessment of Compensation) Act, 1919, s. 2, r. (5).*—2 Halsbury's Statutes 1178. This rule is as follows:—

"Where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the official arbitrator is satisfied that reinstatement in some other place is bona fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement."

*Definitions.*—For definitions of "land" and "enactment," see s. 119 (1), *post*. As to the construction of "compensation," see s. 119 (4), *post*.

**57. Amendments of 9 & 10 Geo. 5, c. 57, etc.**—(1) The Acquisition of Land (Assessment of Compensation) Act, 1919, shall apply in relation to the compulsory acquisition of land under this or any other Act by the Central Land Board or any statutory undertakers as it applies in relation to the compulsory acquisition of land by a government department or a local or public authority, and references in this Act to any such department or authority shall be construed accordingly. [1039]

(2) The rate of interest for any period after the passing of this Act on compensation which fell or falls, in default of agreement, to be ascertained in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919 (whether as originally enacted or as amended by any subsequent enactment including this Act), in respect of land compulsorily purchased on which entry has been made before the payment of the compensation shall, in lieu of being the rate of five per cent. specified under section eighty-five of the Lands Clauses (Consolidation) Act, 1845, be such other rate as may from time to time be prescribed by regulations made by the Treasury under this Act. [1040]

(3) Any regulations made by the Treasury under section sixty-two of the Act of 1944 which are in force at the date of the passing of this Act shall continue in force and have effect as if they had been made under this Act and shall accordingly apply to any compensation which falls, in default of agreement, to be ascertained in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919, as amended by this Act. [1041]

*Acquisition of Land (Assessment of Compensation) Act, 1919.*—2 Halsbury's Statutes 1176. *Central Land Board.*—As to the establishment and constitution of this Board, see s. 2 of the Act, in title TOWN AND COUNTRY PLANNING, *post*.

*Interest on Compensation.*—By the Acquisition of Land (Rate of Interest on Entry) Regulations, 1947 (S. R. & O., 1947, No. 791), *post*, made by the Treasury under s. 62 of the Town and Country Planning Act, 1944 (37 Halsbury's Statutes 481), the rate of interest payable where entry was made before payment of compensation was reduced, as from May 1, 1947, from the 4 per cent. prescribed by s. 62 (1) of the Act of 1944 to 3½ per cent. These regulations are preserved by sub-s. (3) of the present section.

*Lands Clauses Consolidation Act, 1845, s. 85.*—2 Halsbury's Statutes 1142. It is not usual for the title of this Act to be printed with the word "Consolidation" in parentheses as it appears in the King's Printer's copy of the present Act.

*Regulations.*—For the general provisions applicable to regulations under the Act, see s. 111, in title TOWN AND COUNTRY PLANNING, *post*.

*S. 62 of the Act of 1944.*—The Town and Country Planning Act, 1944, s. 62; 37 Halsbury's Statutes 481.

*Definitions.*—For definitions of "land," "statutory undertakers," "government department," "local authority" and "enactment," see s. 119 (1), *post*. As to the construction of the term "compensation," see s. 119 (4), *post*.

**119. Interpretation.**—(1) In this Act, except so far as the contrary is provided or the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say :—

\* \* \* \* \*

“ Act of 1944 ” means the Town and Country Planning Act, 1944 ;

\* \* \* \* \*

“ agriculture ” includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and “ agricultural ” shall be construed accordingly ;

“ appointed day ” means such day as the Minister may by order appoint ;

\* \* \* \* \*

“ building ” includes any structure or erection and any part of a building as so defined, but does not include plant or machinery comprised in a building ;

“ buildings or works ” includes waste materials, refuse and other matters deposited on land, and references to the erection or construction of buildings or works shall be construed accordingly ;

“ building operations ” includes rebuilding operations, structural alterations of or additions to buildings, and other operations normally undertaken by a person carrying on business as a builder ;

\* \* \* \* \*

“ development ” has the meaning assigned to it by section twelve of this Act, and “ develop ” shall be construed accordingly ;

“ development order ” has the meaning assigned thereto by section thirteen of this Act ;

“ development plan ” has the meaning assigned to it by section five of this Act, and includes a plan made under subsection (5) of that section ;

“ enactment ” includes an enactment in any local or private Act of Parliament and an order, rule, regulation, byelaw or scheme made under an Act of Parliament ;

“ engineering operations ” includes the formation or laying out of means of access to highways ;

“ erection ” in relation to buildings includes extension, alteration and re-erection ;

“ functions ” includes powers and duties ;

“ government department ” includes the Electricity Commissioners ;

\* \* \* \* \*

“ land ” means any corporeal hereditament, including a building as defined by this section, and in relation to the acquisition of land under Part IV of this Act includes any interest or right in or over land ;

“ lease ” includes an underlease and an agreement for a lease or underlease, but does not include an option to take a lease or a mortgage, and “ leasehold interest ” means the interest of the tenant under a lease as so defined ;

“ local authority ” means the council of a county, county borough, metropolitan borough or county district, the Common Council of the City of London and any other authority being a local authority within the meaning of the Local Loans Act, 1875, and includes any drainage board and any joint board or joint committee if all the constituent authorities are such local authorities as aforesaid ;

\* \* \* \* \*

"minerals" includes all minerals and substances in or under land of a kind ordinarily worked for removal by underground or by surface working: provided that it shall not include peat cut for purposes other than sale;

\* \* \* \* \*

"Minister" includes the Treasury, the Admiralty, the Board of Trade and any other government department;

"the Minister" has the meaning assigned to it by section one of this Act;

\* \* \* \* \*

"purchase notice" has the meaning assigned to it by section nineteen of this Act;

\* \* \* \* \*

"requisitioned land," and "period of requisition" have the meanings assigned to them by section eighty-nine of this Act;

"statutory undertakers" means persons authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, or any undertaking for the supply of electricity, gas, hydraulic power or water, and "statutory undertaking" shall be construed accordingly;

\* \* \* \* \*

"use," in relation to land, does not include the use of land by the carrying out of any building or other operations thereon;

"Valuation Office" means the Valuation Office of the Inland Revenue Department;

"war damage" has the same meaning as in the War Damage Act, 1943.

### [1042]

(2) If any question arises, in relation to anything required or authorised to be done under this Act, which Minister was or is the appropriate Minister as defined by this section in relation to any statutory undertakers, that question shall be determined by the Treasury, and if any question so arises whether land of statutory undertakers is operational land as defined by this section, that question shall be determined by the Minister who is the appropriate Minister in relation to those undertakers. [1043]

(3) Words in this Act importing a reference to service of a notice to treat shall be construed as including a reference to the constructive service of such a notice which, by virtue of the Sixth Schedule to the Act of 1944, or of any other enactment, is to be deemed to be served. [1044]

(4) Any reference in this Act to the compensation payable in respect of the compulsory acquisition of land shall be construed as including a reference to compensation to be estimated, in connection with the acquisition, for damage sustained by reason of the severing of the land from other land held therewith or otherwise injuriously affecting such other land, and compensation to be so estimated for disturbance or any other manner not directly based on the value of the land. [1045]

(5) References in this Act to any enactment shall be construed as references to that enactment as amended by any subsequent enactment including, except where the context otherwise requires, this Act. [1046]

*Town and Country Planning Act, 1944.*—37 Halsbury's Statutes 420. This Act is modified by s. 50, *ante*, and Sched. VII, *post*, and by ss. 44 and 113, and Scheds. VIII and IX (see title TOWN AND COUNTRY PLANNING, *post*); and its unrepealed provisions, as amended by the present Act, form Sched. XI (*ibid.*). Note the provisions of sub-s. (5) of the present section whereby references to enactments in the present Act are to be construed as references to such enactments as amended by any subsequent enactment including, unless otherwise required by the context, the present Act. Hence references to "the Act of 1944" are, in effect, usually to that Act as it appears in Sched. XI.

*Appointed day.*—July 1, 1948; see the Preliminary Note, *ante*.

*S. 12 of this Act.*—For this section see the title TOWN AND COUNTRY PLANNING, *post*. Subject to a proviso of six paragraphs and to other qualifications, the expression “development” is there defined as “the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.”

*S. 13 of this Act.*—For this section see the title TOWN AND COUNTRY PLANNING, *post*. Development orders are orders of the Minister providing for the grant of permission for the development of land under Part III of the present Act.

*S. 5 of this Act.*—For this section see the title TOWN AND COUNTRY PLANNING, *post*. A development plan is the plan which local planning authorities are required to submit to the Minister with a report of the survey of their area; such authorities are to indicate the manner in which they propose that land in their area is to be used and the stages by which any development is to be carried out. Sub-s. (5) of that section provides for the submission of separate development plans for parts of planning areas prior to the Minister's approval of the plans for the whole areas.

*Electricity Commissioners.*—The Electricity Commissioners were appointed by the Electricity (Supply) Act, 1919, s. 1 (7 Halsbury's Statutes 754), for promoting, regulating and supervising the supply of electricity. The Electricity Act, 1947 (see title ELECTRICITY SUPPLY, *ante*), provides for their dissolution under the nationalised system of electricity supply which that Act was designed to implement.

*Part IV of this Act.*—See the title TOWN AND COUNTRY PLANNING, *post*. This Part of the Act deals with the acquisition and disposal of land for planning purposes, powers in relation to highways, etc.

*Local Loans Act, 1875.*—12 Halsbury's Statutes 242. “Local authority” is defined by s. 34 of that Act as “the justices of any county, liberty, riding, parts, or division of a county in general or quarter sessions assembled, the council of any municipal borough, also any authority whatsoever having power to levy a rate, as in this Act defined, also any prescribed authority.” The terms “rate” and “prescribed” are defined by the same section.

*S. 1 of this Act.*—For this section, see the title TOWN AND COUNTRY PLANNING, *post*. “The Minister” is the Minister of Town and Country Planning.

*S. 19 of this Act.*—For this section see the title TOWN AND COUNTRY PLANNING, *post*. A purchase notice is the notice which an owner of land may, in certain circumstances, serve on the council of the appropriate county borough or county district requiring the council to purchase his interest in the land.

*S. 89 of this Act.*—For this section see the title TOWN AND COUNTRY PLANNING, *post*. In that section “requisitioned land” means “land of which possession has been taken on behalf of His Majesty in the exercise or purported exercise of emergency powers (that is to say powers conferred by regulations made under the Emergency Powers (Defence) Act, 1939, by section fifty-two of the Telegraph Act, 1863, or by section seven of the Air Navigation Act, 1920, or exercisable by virtue of the prerogative of the Crown.” For the Emergency Powers (Defence) Act, 1939, see 32 Halsbury's Statutes 920; for the Telegraph Act, 1863, s. 52, see 19 Halsbury's Statutes 238; and for the Air Navigation Act, 1920, s. 7, see 19 Halsbury's Statutes 195.

By the said s. 89, “period of requisition” in relation to requisitioned land means “the period during which possession of the land under such powers taken as aforesaid continues.”

*War Damage Act, 1943.*—36 Halsbury's Statutes 334. For the definition of “war damage,” see s. 2 thereof (36 Halsbury's Statutes 338).

*Sixth Schedule to the Act of 1944.*—Sched. VI to the Town and Country Planning Act, 1944 (37 Halsbury's Statutes 490 *et seq.*), as modified and amended by the present Act, is printed in Sched. XI to the present Act (see title TOWN AND COUNTRY PLANNING, *post*). The said Sched. VI lays down procedure for the completion of compulsory purchase under orders providing for expedited completion.

**120. Short title, commencement and extent.**—(1) This Act may be cited as the Town and Country Planning Act, 1947. [1047]

(2) This Act shall come into force on the appointed day :

Provided that—

- (a) sections two and three of this Act ; and
- (b) subsection (2) of section thirty-seven of this Act and subsection (2) of section thirty-eight of this Act, and any other provisions of Part IV of this Act which relate to the acquisition of land under either of those subsections ; and
- (c) Part V of this Act, so much of section ninety-one of this Act as relates to land acquired before the appointed day, subsection (2) of section one hundred and thirteen of this Act so far as it relates to Part I of the Ninth Schedule to this Act, and Part I of the said Ninth Schedule ;

shall come into force on the date of the passing of this Act. [1048]

(3) This Act (except section two and subsection (2) of section fifty-eight thereof) shall not extend to Scotland. [1049]

(4) This Act shall not extend to Northern Ireland. [1050]

*Appointed day.*—July 1, 1948 ; see the Preliminary Note, *ante*.  
*Ss. 2, 3, 37 (2), 38 (2), 58 (2), Part VI, ss. 91, 113 (2) and Sched. IX, Part I.*—See title TOWN AND COUNTRY PLANNING, *post*.

## SCHEDULES

\* \* \* \* \*

Sections 20, 51, 54,  
55, 61, 69, 81

### THIRD SCHEDULE

#### EXCEPTED CLASSES OF DEVELOPMENT

##### PART I

##### DEVELOPMENT INCLUDED IN EXISTING USE FOR PURPOSES OTHER THAN COMPENSATION UNDER S. 20

1. The rebuilding, as often as occasion may require, of any building which was in existence on the appointed day and of any building which was in existence before that day but has been destroyed or demolished since the seventh day of January, nineteen hundred and thirty-seven (including the making good of war damage which has been sustained by any such building), so long as the cubic content of the original building is not exceeded in the case of a dwelling-house, by more than one-tenth or seventeen hundred and fifty cubic feet, whichever is the greater, and in any other case by more than one-tenth.

2. The use as two or more separate dwelling-houses of any building which on the appointed day was used as a single dwelling-house. [1051]

##### PART II

##### DEVELOPMENT INCLUDED IN EXISTING USE FOR ALL PURPOSES

3. The enlargement, improvement or other alteration, as often as occasion may require, of any such building as is mentioned in paragraph 1 of this Schedule, or any building substituted therefor by the carrying out of any such operations as are mentioned in that paragraph, so long as the cubic content of the original building is not increased or exceeded, in the case of a dwelling-house, by more than one-tenth or seventeen hundred and fifty cubic feet, whichever is the greater, and in any other case by more than one-tenth.

4. The carrying out, on land which was used for the purposes of agriculture or forestry on the appointed day, of any building or other operations required for the purposes of that use, other than operations for the erection, enlargement, improvement or alteration of dwelling-houses or of buildings used for the purposes of market gardens, nursery grounds or timber yards or for other purposes not connected with general farming operations or with the cultivation or felling of trees.

5. The winning and working, on land held or occupied with land used for the purposes of agriculture, of any minerals reasonably required for the purposes of that use, including the fertilisation of the land so used and the maintenance, improvement or alteration of buildings or works thereon which are occupied or used for the purposes aforesaid.

6. In the case of a building or other land which, on the appointed day, was used for a purpose falling within any general class specified in an order made by the Minister for the purposes of this paragraph, or which, being unoccupied on the appointed day, was last used (otherwise than before the seventh day of January, nineteen hundred and thirty-seven) for any such purpose, the use of that building or land for any other purpose falling within the same general class.

7. In the case of any building or other land which, on the appointed day, was in the occupation of a person by whom it was used as to part only for a particular purpose, the use for that purpose of any additional part of the building or land not exceeding one-tenth of the cubic content of the part of the building used for that purpose on the appointed day or, as the case may be, one tenth of the area of the land so used on that day.

8. The deposit of waste materials or refuse in connection with the working of minerals, on any land comprised in a site which, on the appointed day, was being



used for that purpose, so far as may be reasonably required in connection with the working of those minerals. [1052]

*Appointed day.*—July 1, 1948; see the Preliminary Note, *ante*.

*Compensation under s. 20.*—For this section, which provides for the payment of compensation for the refusal of permission to carry out development in certain cases, see the title TOWN AND COUNTRY PLANNING, *post*.

*Definitions.*—For definitions of "building," "appointed day," "war damage," "use," "land," "agriculture," "building operations," "erection," "minerals" and "buildings or works," see s. 119 (1), *ante*.

\* \* \* \* \*

## Section 50

## SEVENTH SCHEDULE

### MODIFICATIONS OF PART II OF THE TOWN AND COUNTRY PLANNING ACT, 1944

#### *Elimination of overlap between owner-occupier supplement and increase of converted value payment*

1.—(1) Where an interest in land the value of which falls to be ascertained in accordance with the provisions of Part II of the Act of 1944 for the purposes of the compensation payable on a compulsory acquisition thereof is an interest in a hereditament or part of a hereditament which has sustained war damage, then if—

- (a) by virtue of section fourteen of the War Damage Act, 1943, or of any direction given by the Treasury under paragraph (b) of subsection (2) of section twenty of that Act, a value payment falls to be made in respect of the damage so far as not made good before the date of the acquisition; and
- (b) the amount of that payment falls to be increased by virtue of the War Damage (Increase of Value Payments) Order, 1947, or any subsequent order made by the Treasury under section eleven of the said Act; and
- (c) the person entitled to the compensation payable in respect of the compulsory acquisition of the interest in question is also entitled by virtue of section fifty-eight of the Act of 1944, either as originally enacted or as amended by the Acquisition of Land (Increase of Supplement) Order, 1946, or any subsequent order made by the Treasury under section sixty of that Act, to receive a supplement to that compensation,

the amount of the compensation payable in respect of the compulsory acquisition shall be reduced in the manner provided by this paragraph by such sum as may be appropriate, not exceeding the amount by which the value payment is increased as aforesaid, or the amount of the supplement payable as aforesaid, whichever is the less.

(2) Any reduction required by virtue of this paragraph to be made in the compensation payable in respect of the compulsory acquisition of an interest in land shall be effected as follows: that is to say, the War Damage Commission shall, on a claim made to the Commission in that behalf within the time and in the manner prescribed by regulations made by the Treasury under this Act, pay to the Minister or authority by whom that interest is compulsorily acquired a sum equal to the amount of the reduction, together with interest thereon at the rate of two and a half per cent. per annum from the date of the acquisition, and shall deduct that amount (including interest thereon as aforesaid) from the amount of any value payment or share of the value payment (including interest on any such payment or share) payable by the Commission under the War Damage Act, 1943, to the person from whom that interest is acquired.

(3) Any sum payable by the War Damage Commission to a Minister or authority by virtue of the provisions of this paragraph in respect of the compulsory acquisition of any interest in land shall be paid at the time when the value payment or share of a value payment payable to the owner of that interest under the War Damage Act, 1943, is discharged.

(4) Any question arising under this paragraph as to what reduction is appropriate in the compensation payable in respect of the compulsory acquisition of an interest in land shall, in default of agreement, be referred to and determined by the War Damage Commission, whose decision shall be final; and paragraph 6 of the First Schedule to the War Damage Act, 1943 (which enables the Commission to regulate the procedure for the determination of questions subject to determination



by them under that Act) shall have effect as if any question falling to be determined by the Commission under this paragraph were a question subject to determination by them under that Act.

(5) Where an interest in land which has been acquired by agreement before the commencement of this Act by a person authorised by virtue of any enactment to acquire it compulsorily is an interest in a hereditament or part of a hereditament which has sustained war damage, then if—

(a) the conditions specified in sub-paragraphs (1) (a) and (1) (b) of this paragraph are satisfied in relation thereto ; and

(b) the person to whom the purchase price is payable in respect of the acquisition of the interest in question would, if the interest had been acquired compulsorily, have been entitled to any such supplement as is mentioned in sub-paragraph (1) (c) of this paragraph ;

the amount of the purchase price payable in respect of the acquisition shall be reduced by such sum as may be appropriate, not exceeding the amount by which the value payment is increased as is mentioned in sub-paragraph (1) (b) of this paragraph, or the amount of the supplement which would have been payable as aforesaid, whichever is the less ; and sub-paragraphs (2), (3) and (4) of this paragraph shall apply in relation to the reduction required by virtue of this sub-paragraph to be made in the purchase price as if for any reference in those sub-paragraphs to the compulsory acquisition of an interest in land or to the amount of the compensation payable in respect of that acquisition there were substituted respectively a reference to the acquisition of an interest in land by agreement and to the purchase price payable in respect of that acquisition.

(6) The reference in sub-paragraph (2) of this paragraph to the date of acquisition of an interest in land shall be construed as a reference to the date of the completion of the acquisition or, if interest on the compensation, or on the purchase price, as the case may be, becomes payable before that date (whether by virtue of entry on the land or otherwise), as a reference to the date from which the interest becomes payable.

#### *Assessment of compensation in case of certain agricultural land*

2. In subsection (2) of section fifty-seven of the Act of 1944, and paragraph 4 of the Seventh Schedule to that Act, references to agricultural holdings and to holdings as defined for the purposes of the Agricultural Holdings Act, 1923, shall be construed as including references to any land which, if it were held by a tenant, would be a holding as so defined.

#### *Extension of owner-occupier supplement to certain subsidiary companies*

3.—(1) Where an interest in land the value of which falls to be ascertained in accordance with the provisions of Part II of the Act of 1944 for the purposes of the compensation payable on a compulsory acquisition thereof is an interest held by a company having among its objects the holding of land, and being related (as hereinafter defined) to another company which carries on business on land so held, then, without prejudice to the provisions of paragraph (a) of subsection (6) of section fifty-eight of the said Act, or of any regulation made thereunder, subsection (5) of that section shall have effect in relation to that interest as if references in paragraphs (a) to (d) of that subsection to the person entitled to compensation for the purchase of that interest included references to the last mentioned company.

(2) For the purposes of this paragraph a company shall be deemed to be related to another company if either of those companies is a subsidiary of the other (as defined by the Companies Act, 1947), or if both of them are subsidiaries (as so defined) of a third company.

#### *Assessment of compensation by reference to after-damage value*

4.—(1) Where under section sixty-one of the Act of 1944, the value of any land in a hereditament which has sustained war damage is for the purpose of a compulsory acquisition required to be ascertained, in accordance with the provisions of the Eighth Schedule to that Act, by reference to the certified after-damage value of the hereditament, then if—

- (a) the hereditament consists of premises in respect of which a justices' licence within the meaning of the Licensing (Consolidation) Act, 1910, was in force or in suspense at the time when the war damage occurred; and
- (b) between that time and the time when the notice to treat was served there had been any change in the circumstances of the licence, whether by extinction, removal or suspension by virtue of section ten of the Finance Act, 1942, or section twelve of the Finance Act, 1946,

sub-paragraph (3) of paragraph (1) of the said Eighth Schedule shall have effect as if the change constituted a material difference in the state of the premises and the change shall be taken into account under the said sub-paragraph in determining the value of the premises under the War Damage Act, 1943, by reference to the state of the premises at the time when the notice to treat is served.

(2) Neither the right to land tax in respect of any land nor the right to a redemption annuity under the Tithe Act, 1936, in respect of any land shall be taken into account as interests in land under paragraph 2 of the Eighth Schedule to the Act of 1944, but such adjustments of the certified after-damage value of the hereditament shall be made for the purposes of that Schedule as are necessary to produce for those purposes the result which would have been produced therefor if liability to land tax or to any such annuity had been included among the burdens referred to in paragraph 1 (1) (c) of the Second Schedule to the War Damage Act, 1943. [1053]

*Town and Country Planning Act, 1944, Part II.*—37 Halsbury's Statutes 476 *et seq.* This Part, which comprises ss. 57 to 62 (inclusive) of the 1944 Act, has been repealed by Sched. IX, Part I, of the present Act (see the title TOWN AND COUNTRY PLANNING, *post*) as from August 6, 1947, the date of the Royal Assent (s. 120 (2), *ante*). Accordingly, the said sections do not appear in Sched. XI to the present Act.

For ss. 57 (2), 58, 60 and 61, and Schedules VII and VIII to the Act of 1944, see 37 Halsbury's Statutes 477, 480, 481, 493 and 494.

*War Damage Act, 1943.*—36 Halsbury's Statutes 334. For ss. 11, 14 and 20 (2) (b), and Sched. I, para. 6, and Sched. II, para. 1 (1) (c), see 36 Halsbury's Statutes 350, 353, 358, 433 and 434.

The term "war damage" is defined by s. 2 of the Act of 1943, the definition being applied to the present Act by s. 119 (1), *ante*. As to the constitution of the War Damage Commission, see s. 3 of the 1943 Act. "Hereditament" is defined by s. 5 thereof. As to cost of works and value payments, see ss. 7 *et seq.* of the same Act.

S. 20 (2) (b) of the Act of 1943 (36 Halsbury's Statutes 358) empowers the War Damage Commission to make value payments instead of cost of works payments where Treasury directions require that damage is not to be made good.

*War Damage (Increase of Value Payments) Order, 1947.*—S. R. & O., 1947, No. 390; see the title AIR-RAID PRECAUTIONS, *ante*. As its title indicates, this order provided for an increase in the value payments to be made under the War Damage Act, 1943.

*Acquisition of Land (Increase of Supplement) Order, 1946.*—S. R. & O., 1946, No. 1163. This order, made under s. 60 (3) of the Town and Country Planning Act, 1944 (37 Halsbury's Statutes 480), increased the maximum rate of supplement to be paid to owner-occupiers in respect of compensation calculated by reference to 1939 prices from 30 per cent. to 60 per cent. where notices to treat were served on or after July 22, 1946, the date of the order.

*Agricultural Holdings Act, 1923.*—1 Halsbury's Statutes 80. S. 57 (1) of that Act defines the term "holding" as follows:—

" 'Holding' does not include an allotment garden or include any land cultivated as a garden unless it is cultivated wholly or mainly for the purpose of the trade or business of market gardening, but, except as aforesaid, means any parcel of land held by a tenant, which is either wholly agricultural or wholly pastoral, or in part agricultural and as to the residue pastoral, or in whole or in part cultivated as a market garden, and which is not let to the tenant during his continuance in any office, appointment, or employment held under the landlord."

However, the Agriculture Act, 1947 (10 & 11 Geo. 6, c. 48), s. 45 and Sched. VII, paragraph 18, provides for a new definition of "holding" to be substituted as from March 1, 1948 (Agriculture Act, 1947 (Commencement) (No. 1) Order, 1948; S.I. 1948, No. 342).

*Companies Act, 1947.*—10 & 11 Geo. 6, c. 47. The meaning of "subsidiary" in this connection is explained in s. 18 of the Companies Act, 1947. Under that section one company is to be deemed a subsidiary of another only if—

- (a) that other either—
  - (i) is a member of it and controls the composition of its board of directors, or
  - (ii) holds more than half in nominal value of its equity share capital, or
- (b) the first mentioned company is a subsidiary of any company which is that other's subsidiary.

As to when the composition of a company's board of directors is to be deemed to be controlled by another company, see sub-s. (2) of the same section, and for the principles to be observed in applying the general conditions, referred to above, under which one company becomes a subsidiary of another, see sub-s. (3) thereof.

*Certified after-damage value.*—As to the meaning of this term, see the Town and Country Planning Act, 1944, s. 61 and Sched. VIII (37 Halsbury's Statutes 481, 494 *et seq.*).

*Licensing (Consolidation) Act, 1910.*—9 Halsbury's Statutes 985 *et seq.* This, the principal

Act in relation to intoxicating liquors, provides, *inter alia*, that excise licences under which intoxicating liquor may be sold by retail are to be granted only to persons with justices' licences granted in accordance with the detailed provisions of the Act.

*Finance Act, 1942, s. 10.*—35 Halsbury's Statutes 180. This section provides for putting justices' licences for the sale of intoxicating liquors into "cold storage" in cases where, by reason of war conditions, there has been a temporary discontinuance of business.

*Finance Act, 1946, s. 12.*—39 Halsbury's Statutes 741. This section provides for putting justices' licences into "cold storage" in additional cases where business has been temporarily discontinued because of the compulsory acquisition, actual or proposed, of the licensed premises, removal being impossible or impracticable.

*Land tax.*—See 10 Halsbury's Statutes 171 *et seq.* The principal statute relating to the property chargeable with land tax and the payment thereof is still the Land Tax Act, 1797 (10 Halsbury's Statutes 174), though many of its provisions have been repealed. The tax was made permanent by the Land Tax Perpetuation Act, 1798 (10 Halsbury's Statutes 204); see also the Land Tax Act, 1813 (10 Halsbury's Statutes 266). A great number of redemptions have, however, been carried out under the Land Tax Redemption Acts, 1802, 1813 and 1817, and the Finance Act, 1896 (10 Halsbury's Statutes 205, 253, 273, 292).

*Tithe Act, 1936.*—29 Halsbury's Statutes 923. This Act abolished tithe rentcharge as from October 2, 1936, and substituted in its place redemption annuities calculated according to the provisions of the Act and payable for sixty years unless earlier redeemed in accordance with rules prescribed by the Treasury.

*Definitions.*—For definitions of "land," "Act of 1944," "a Minister," "enactment" and "agricultural land," see s. 110 (1), *ante*.

\* \* \* \* \*

## ORDERS, CIRCULARS AND MEMORANDA

### COMPULSORY PURCHASE OF LAND AMENDMENT REGULATIONS, 1947

*S. R. & O., 1947, No. 121*

*January 23, 1947*

The Minister of Health, in exercise of the powers conferred on him by the first schedule to the Acquisition of Land (Authorisation Procedure) Act, 1946, and of all other powers enabling him in that behalf, hereby makes the following regulations:—

1. These regulations may be cited as the Compulsory Purchase of Land Amendment Regulations, 1947. [1054]

2.—(1) In the form of compulsory purchase order set out in Form No. 1 in the schedule to the Compulsory Purchase of Land Regulations, 1946, in article 1 before the word "schedule" there shall be inserted the word "[first]."

(2) After article 3 in the said form there shall be inserted the following article:—

"[3A. The land described in the second schedule to this order (being land as to which the Minister of [Agriculture and Fisheries] [Town and Country Planning] has certified in accordance with paragraph 11 of the first schedule to the Acquisition of Land (Authorisation Procedure) Act, 1946, that he is satisfied that it will be given in exchange for so much of the land described in the first schedule to this order as forms part of [a common] [an open space] [an allotment], that it is not less in area and is equally advantageous to the persons, if any, entitled to rights of common or other rights, and to the public, and that it will be vested in the persons in whom the [common] [open space] [allotment] was vested, and subject to the like rights, trusts and incidents as attach thereto) shall as from the date on which this order becomes operative or as from the date on which the said land shall be given in exchange, whichever shall be the later, vest in the persons in whom the land for which it is given in exchange is then vested, subject to the like rights, trusts and incidents as attach thereto, and the land

for which it is given in exchange shall thereupon be discharged from all rights, trusts and incidents to which it was previously subject.]”

(This provision should be omitted if unnecessary.)

(3) For the heading of the schedule to the said form there shall be substituted the heading “[FIRST] SCHEDULE”.

(4) After the note to the said schedule there shall be inserted the following provision :—

“ [SECOND SCHEDULE.

(Here insert description of land to be given in exchange)] ”.

(This schedule should be omitted if article 3A is omitted.) [1055]

\* \* \* \* \*

## ACQUISITION OF LAND (RATE OF INTEREST ON ENTRY) REGULATIONS, 1947

*S. R. & O., 1947, No. 791*

*April 28, 1947*

The Treasury, in exercise of the powers conferred upon them by Section 62 of the Town and Country Planning Act, 1944 (hereinafter referred to as “ the Act ”), hereby make the following Regulations.

1. The rate of interest for any period after the date on which these Regulations come into force on compensation which fell, or falls, in default of agreement, to be ascertained in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919 (whether as originally enacted or as amended by the Act) in respect of land compulsorily purchased on which entry has been made before the payment of compensation shall, in lieu of being the rate of four per cent. specified in sub-section (1) of Section 62 of the Act, be the rate of three and a half per cent. per annum. [1056]

2.—(1) These Regulations may be cited as the Acquisition of Land (Rate of Interest on Entry) Regulations, 1947, and shall come into force on the first day of May, 1947.

(2) The Interpretation Act, 1889, applies to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament. [1057]

\* \* \* \* \*

### EXPLANATORY NOTE

(This Note is not part of the above Regulations, but is intended to indicate their general purport.)

The purpose of these Regulations is to reduce from the 4 per cent. specified in Section 62 (1) of the Town and Country Planning Act, 1944, to 3½ per cent., the rate of interest payable where entry is made, before payment of the compensation, on land in England and Wales which is being purchased compulsorily.

Circular 138/47.

To all Housing Authorities  
County Councils (for information)  
England.

MINISTRY OF HEALTH,  
WHITEHALL,  
LONDON, S.W.1.  
18th August, 1947.

SIR,

## REPAIR AND MAINTENANCE OF REQUISITIONED PREMISES

1. I am directed by the Minister of Health to say that he has been considering the arrangements for the repair and maintenance of premises held under requisition for the inadequately housed, and has decided that in future the following procedure should be adopted :—

- (1) Repairs should be limited to the minimum necessary to provide reasonable accommodation for the occupants and to prevent deterioration of the structure.
- (2) Repairs may be carried out by local authorities without the prior approval of this Department where the estimated cost of the repairs does not exceed £50 per dwelling unit, the limit of £50 to relate to any individual complete job of repair undertaken at any time.
- (3) Where the estimated cost of any particular work of repair exceeds £50 prior approval by the Department will be necessary, but such approval will be issued without stipulation that the owner be approached to pay the whole or any portion of the expenditure. In this connection I am to request that, subject to the reservation in paragraph (2) local authorities should refrain from seeking to recover from owners contributions towards the cost of repairs which they carry out as this is likely to embarrass the District Valuer in his negotiations for the settlement of claims under section 2 of the Compensation (Defence) Act, 1939.
- (4) Records of works of repair should be kept so that the information will be available to the District Valuer when he has to consider claims under section 2 of the Compensation (Defence) Act. It is suggested that the records should give the date of the repairs, a detailed description of the work carried out, and a statement of the actual cost.

2. The foregoing paragraphs apply where compensation rental has been assessed in accordance with section 2 (1) (a) of the Compensation (Defence) Act, 1939. In some cases, however, District Valuers were empowered to conclude agreements under section 15 of the Act, providing for the payment of inclusive compensation, *i.e.*, representing rates, repairs, maintenance and insurance. On this basis repairs and upkeep are the responsibility of the owner and ordinarily they will be done either by the owner or by the local authority with his consent on his behalf. There may be a small minority of cases where local authorities may experience considerable difficulty in getting the work done by the owner or in recovering the cost either directly or by deduction from future payments of rent. In such cases where the cost of the work does not exceed £10 per dwelling the local authority may carry out the work and include the cost in its claim for reimbursement. If the cost exceeds £10, or difficulty in obtaining payment is experienced with an owner of a number of requisitioned properties, the facts should first be reported to the District Valuer to consider if compensation should be re-assessed on the basis of section 2 (1) (a) of the Act.

3. The Minister hopes that these arrangements will reduce the amount of work required in connection with these repairs and will commend themselves to local authorities. [1058]

I am, Sir, etc.

\* \* \* \* \*

The Clerk to the Authority.

## CASES

*Acquisition of land—Compensation—Owner also a shareholder and director of tenant company—Possible depreciation of shares through notice to quit—Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), s. 2.*

The owner of land which was acquired compulsorily by a local authority was a director and shareholder of the company which was tenant and occupier of the land. She alleged that, if the company were dispossessed of the land, the value of her shares in it would be depreciated :—

*Held* : she could not claim as compensation under s. 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919, a sum representing this depreciation in the value of her shares.—*ROBERTS v. COVENTRY CORPN.*, [1947] 1 All E. R. 308 ; 111 J. P. 165 ; 63 T. L. R. 108 ; 91 Sol. Jo. 162 ; 45 L. G. R. 84, D. C. [1059]

*Emergency legislation—Requisition of premises—Transfer of possession—Power of competent authority—Defence (General) Regulations, 1939 (S. R. & O., 1939, No. 927, as amended) regs. 49, 51.*

A Minister of the Crown who, as a competent authority, requisitions property under the Defence (General) Regulations, 1939, holds the property on behalf of the Crown and its entitled to transfer possession of it to another competent authority.

By virtue of the Defence (General) Regulations, 1939, regs. 49 and 51 (which were amended in pursuance of the Supplies and Services (Transitional Powers) Act, 1945, s. 1 (1)), the Minister of Works requisitioned certain leasehold premises during the war to accommodate the American Red Cross Society. When the premises were vacated by the Society after the war, the Minister of Works transferred possession of the premises to the Minister of Health, who in turn transferred possession to the defendants, as the local housing authority, to provide housing accommodation :—

*Held* : the Minister of Works was entitled to transfer possession of the premises to the Minister of Health and the latter to the defendants.—*PROGRESS BUILDING, LTD. v. WESTMINSTER CITY CORPN.*, [1947] 1 All E. R. 684 ; 111 J. P. 300 ; 45 L. G. R. 468. [1060]

*Emergency legislation—Requisition—Land—Land charges—Need for registration of interest of requisitioning authority—"Right or privilege over or affecting land"—Defence (General) Regulations, 1939, reg. 51 (1)—Land Charges Act, 1925 (c. 22), s. 10 (1), Class D (iii).*

A dwelling-house owned by Mrs. M. was requisitioned under reg. 51 (1) of the Defence (General) Regulations, 1939, by the town clerk of L. under powers delegated to him by the Minister of Health under reg. 51 (5). The house was adapted so as to constitute two living units, the lower of which was subsequently released to Mrs. M. who thereupon occupied that part. The son of Mrs. M. purchased the whole property, and despite a refusal of the plaintiffs to release the upper portion he took possession of it :—

*Held* : the words "right or privilege over or affecting land" in the Land Charges Act, 1925, s. 10 (1), Class D (iii), have a restricted meaning *ejusdem generis* with the word "easement", and do not extend to include the rights of possession and user arising on the exercise of powers of requisitioning under Defence Regulation 51, and, therefore, those rights do not require to be registered as a land charge to prevent their being void as against a purchaser of the land.—*LEWISHAM BOROUGH COUNCIL v. MALONEY*, [1947] 2 All E. R. 36 ; [1947] L. J. R. 991 ; 177 L. T. 175 ; 111 J. P. 454 ; 63 T. L. R. 330 ; 91 Sol. Jo. 368 ; 45 L. G. R. 388, C. A. [1061]

## LAND DRAINAGE

*See also* AGRICULTURE

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## STATUTES

# AGRICULTURE ACT, 1947

(10 & 11 Geo. 6, c. 48)

## PRELIMINARY NOTE

S. 96 of this Act, which section came into force on October 1, 1947 (Agriculture Act, 1947 (Commencement) Order, 1947, S. R. & O., 1947, No. 1767; see title AGRICULTURE, *ante*), provides for the continuation of grants for drainage and supply of water to agricultural land pursuant to schemes inaugurated in 1940.

The Agriculture (Miscellaneous War Provisions) Act, 1940, s. 15 (33 Halsbury's Statutes 14), provided for the payment of grants towards the expenses of carrying out schemes approved by War Agricultural Executive Committees for the drainage of agricultural land by the mole drainage process, a system by which a round plug attached to a coulter is drawn by steam power, by tractor or by windlass, resulting in a shallow drain suitable for pasture land. The provision of s. 15 was, by s. 22 (4) of the same Act, limited to schemes approved before the end of the war period, which in accordance with s. 30 (1) (c) of that Act (as amended by the Emergency Laws (Transitional Provisions) Act, 1946, s. 3 ; 39 Halsbury's Statutes 882), ended on December 31, 1947.

The present section removes this time-limit, and allows the payment of grants in respect of approved schemes, application for approval of which is made before the expiration of five years from August 6, 1947, the date of passing of the Act, or before the expiration of seven years from such date if the Minister by Order, made with Treasury consent and the approval by resolution of both Houses, directs such extension. [1062]

## ARRANGEMENT OF SECTIONS

\* \* \* \* \*

## PART V

## ADMINISTRATIVE AND GENERAL

\* \* \* \* \*

*Continuation of contributions to cost of drainage, water supply and application of lime*

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\* \* \* \* \*

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* * *	*	*	*	*	*	



*An Act to make further provision for agriculture.* [1063]

[6th August, 1947.]

\* \* \* \*

## PART V

### ADMINISTRATIVE AND GENERAL

\* \* \* \*

#### *Continuation of contributions to cost of drainage, water supply and application of lime*

**96. Continuation of grants for drainage of, and supply of water to agricultural land.**—(1) So much of the Agriculture (Miscellaneous War Provisions) Act, 1940, as limits the period during which schemes may be approved under section fifteen thereof (under which grants may be made by the Minister towards the cost of approved schemes for field drainage and the improvement of ditches and for the supply of water to agricultural land) shall cease to have effect, but no scheme shall be approved under that section unless application for the approval thereof has been made, in such form and manner as the Minister may with the approval of the Treasury determine, before the expiration of five years from the passing of this Act, or if the Minister by order made with the approval of the Treasury so directs, before the expiration of seven years from the passing of this Act. [1064]

(2) An order made under this section shall be of no effect unless approved by resolution of each House of Parliament. [1065]

*Effect of section.*—See the Preliminary Note, *ante*.

*Agriculture (Miscellaneous War Provisions) Act, 1940.*—33 Halsbury's Statutes 3.

*The Minister.*—The Minister of Agriculture and Fisheries.

*Approved by resolution of each House.*—This refers to the so-called "affirmative resolution procedure" to which ss. 4 to 7 of the Statutory Instruments Act, 1946 (39 Halsbury's Statutes 785 *et seq.*), do not apply.

\* \* \* \*

#### *Supplementary*

\* \* \* \*

**111. Short title, commencement and extent.**—(1) This Act may be cited as the Agriculture Act, 1947. [1066]

(2) This Act shall come into operation on such date as His Majesty may by Order in Council appoint; and an Order under this subsection may appoint different dates in relation to different provisions of this Act. [1067]

(3) This Act, except in so far as is expressly provided therein, shall not extend to Scotland or Northern Ireland. [1068]

*Date of commencement.*—By the Agriculture Act, 1947 (Commencement) Order, 1947 (see title AGRICULTURE, *ante*), s. 96 of the Act, *supra*, came into operation on October 1, 1947.

\* \* \* \*

## LONDON

ORDERS, CIRCULARS AND MEMO-  
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## ORDERS, CIRCULARS AND MEMORANDA

### LONDON TRAFFIC (MISCELLANEOUS PROVISIONS) ORDER, 1947

*S. R. & O.*, 1947, No. 850

May 6, 1947

The Minister of Transport, in exercise of the powers conferred upon him by Regulation 70 of the Defence (General) Regulations, 1939, as having effect by virtue of the Supplies and Services (Transitional Powers) Act, 1945, and of all other powers enabling him in that behalf, hereby makes the following Order :—

#### PART I

##### *General*

1. Regulations 38, 39, 40 and 41 of the London Traffic (Miscellaneous Provisions) Consolidation Provisional Regulations, 1934, dated April 13th, 1934, the London Traffic (Jermyn Street) Regulations, 1934, the London Traffic (Wigmore Street) Regulations, 1936, and the London Traffic (Wigmore Street) (Amendment) Regulations, 1938, are hereby suspended. [1069]

2. In this Order the following expressions have the meanings hereby assigned to them :—

“ Owner or driver of a vehicle ” means owner, driver or other person in charge of a vehicle,

“ Street ” means a highway and includes part of a highway,

“ Restricted Street ” means any highway specified in the Schedule to this Order (hereinafter referred to as “ a scheduled street ”) and the first 120 feet of every highway which joins a scheduled street on either side measured from its junction with the scheduled street,

“ The prescribed hours ” means the period of time between 11.30 a.m. and 6.30 p.m. on any day other than a Saturday or Sunday, and

“ Public Service Vehicle ” has the meaning assigned to it by the Road Traffic Act, 1930. [1070]

#### PART II

##### *Street Trading*

3. No person shall, on any day other than a Sunday, sell goods from a vehicle in any restricted street, unless—

(a) that [a] person is licensed or otherwise duly authorised by the Local Authority concerned to sell goods from a stationary pitch and sells goods from that pitch ; or

(b) the goods are immediately delivered at or taken into premises in close proximity to the vehicle from which the sale is effected. [1071]

*Note.*—The word placed in square brackets, *supra*, would appear to be surplusage.

#### PART III

##### *Waiting, Loading and Unloading of Vehicles*

4. Subject to the succeeding provisions of this Order no owner or driver of a vehicle (other than a person licensed or otherwise duly authorised to sell goods from a stationary pitch) shall cause or permit such vehicle to wait in any restricted street during the prescribed hours except for the purpose of :—

(a) enabling any person to board or alight from such vehicle or to load thereon or unload therefrom his personal luggage, or

- (b) delivering or collecting goods or merchandise or loading or unloading such vehicle at premises situate within such street if it is not reasonably practicable to load or unload the vehicle in any neighbouring street not being a restricted street ; or

for any longer period than may be necessary for such purpose.

Provided that no vehicle engaged in delivering or collecting goods or merchandise or being loaded or unloaded shall in any restricted street wait for more than 20 minutes and that the driver of any vehicle waiting for such purpose shall move the vehicle on the instructions of a police officer in uniform whenever such moving may be reasonably necessary for the purpose of preventing obstruction. [1072]

5. Nothing in Article 4 of this Order shall apply :—

- (1) so as to restrict the loading or unloading of any vehicle while such vehicle is in actual use in connection with—
- (a) the removal of any obstruction to traffic ;
  - (b) any repairs that may be necessary to any restricted street or to any sewers, drains, gas, water or electricity or other pipes or mains or to the apparatus of any statutory undertaker laid under or erected over such street or to any public convenience in or under such street provided that such repairs cannot reasonably be carried out outside the prescribed hours ;
  - (c) building operations or excavations in connection with building operations or demolitions, if it is not reasonably practicable to load or unload the vehicle in any neighbouring street not being a restricted street ;
  - (d) the removal of furniture from one office or dwelling house to another ;
  - (e) the collection or delivery of goods which cannot reasonably be loaded or unloaded outside the prescribed hours or within the 20 minutes allowed provided that notice is given 48 hours in advance to the police, their consent is obtained and such reasonable conditions as they may impose are complied with.
- (2) to fire engines, ambulances or any vehicle in the service of a local authority or police force while such vehicle is being used as a matter of urgent necessity in a restricted street ;
- (3) to any public service vehicle, tram or trolley vehicle whilst waiting at an authorised stopping place or at a turning or terminal point ;
- (4) to any hackney carriage waiting upon any duly authorised cab rank ;
- (5) to any vehicle lawfully waiting upon any duly authorised parking place. [1073]

6. No owner or driver of a vehicle delivering or collecting goods or merchandise or person engaged in the course of or in connection with the loading or unloading of any article or goods whatsoever on to or from any vehicle within any restricted street shall, during the prescribed hours cause or permit :—

- (1) any such goods, merchandise or article to be deposited on the carriageway except immediately in rear of the vehicle or allow any goods, merchandise or article so deposited to remain on the carriageway before the arrival or after the departure of the vehicle ;
- (2) any such goods, merchandise or article to be deposited on the footway ;

- (3) to be used over or across any part of the carriageway or footway any ropes, chains, or other apparatus any part of which or any load suspended therefrom, if over the carriageway, is less than 16 feet in a vertical line from the surface of the carriageway, except when vertically over any vehicle to be loaded or unloaded, or if over the footway is less than 9 feet in a vertical line from the surface of the footway ;
- (4) any such goods, merchandise or article to be passed from hand to hand across any part of the carriageway or footway.

Provided :—

- (a) that nothing in this Article shall apply to any person having charge of, or engaged in the loading or unloading of, any vehicle while such vehicle is in actual use in connection with any of the purposes specified in sub-paragraphs (a) and (b) of paragraph (1) of Article 5 of this Order or in paragraph (2) of that Article ;
- (b) that nothing in paragraphs (1), (2) and (4) of this Article shall apply to any person engaged in the loading or unloading of any vehicle in connection with (i) building operations or excavations in connection with building operations or demolitions or (ii) the maintenance or redecoration of the exterior of premises or the erection or maintenance of signs ; and
- (c) that this Article shall not apply on Christmas Day, Good Friday, the day preceding Good Friday, Bank Holidays and days appointed by proclamation to be Bank Holidays. [1074]

7. This Order shall come into force on the twenty-seventh day of May, 1947, and may be cited as “ The London Traffic (Miscellaneous Provisions) Order, 1947.” [1075]

\* \* \* \* \*

### SCHEDULE

Notting Hill Gate,	from Hillgate Street to Clanricarde Gardens.
Bayswater Road,	from Stanhope Place to Marble Arch.
Marble Arch.	
Oxford Street,	from Marble Arch to St. Giles' Circus.
St. Giles' Circus.	
New Oxford Street,	from St. Giles' Circus to High Holborn.
High Holborn,	from New Oxford Street to Grays Inn Road.
Bloomsbury Way, Bloomsbury Square	from New Oxford Street to Southampton Row.
(South-east side), Vernon Place,	
Southampton Row,	from Theobalds Road to High Holborn.
Edgware Road,	from Church Street to Crawford Place and from Bryanston Street to Marble Arch.
Park Lane,	from Oxford Street to Green Street.
Great Cumberland Place,	from a point 150 feet north of Seymour Street to Oxford Street.
Orchard Street,	from Wigmore Street to Oxford Street.
Duke Street,	from Wigmore Street to Oxford Street.
James Street,	from Wigmore Street to Oxford Street.
New Bond Street, }	
Old Bond Street, }	from Oxford Street to Piccadilly.
Portman Square (East side).	
Wigmore Street,	from Portman Square to Cavendish Square.
Cavendish Square (North side).	

Cavendish Place,  
Mortimer Street,  
Margaret Street,  
Great Portland Street,  
Regent Street,

from Cavendish Square to Langham Place.  
from Langham Place to a point 150 feet east of Great Titchfield Street.  
from Regent Street to Great Portland Street.  
from Great Castle Street to Oxford Street.  
from Cavendish Place to Princes Street and from Air Street to Jermyn Street.

Kensington High Street,  
Knightsbridge,  
Hyde Park Corner,  
Duke of Wellington Place,  
Grosvenor Place,  
Piccadilly,

from Campden Hill Road to Palace Avenue.  
from Park Close to Wilton Place.  
from Knightsbridge to Piccadilly.  
from Piccadilly to Grosvenor Place.  
from Hyde Park Corner to Grosvenor Crescent.  
from Hyde Park Corner to Hamilton Place and from Stratton Street to Haymarket.

Piccadilly Circus.  
Glasshouse Street,

from Sherwood Street southwards to Regent Street.  
from Piccadilly to Cambridge Circus.  
from Shaftesbury Avenue to Coventry Street.

. Shaftesbury Avenue,  
Great Windmill Street,

Cambridge Circus.  
Coventry Street,  
New Coventry Street,  
Leicester Square (North side),  
Cranbourn Street,  
Berkeley Street,  
Arlington Street,  
Bennet Street,

from Haymarket to Charing Cross Road.

St. James's Street,  
Jermyn Street,  
Haymarket,

from Mayfair Place to Piccadilly.  
from Piccadilly to Bennet Street.  
from Arlington Street to St. James's Street.  
from Piccadilly to Bennet Street.  
from St. James's Street to Haymarket.  
from Coventry Street to Jermyn Street.

Euston Road,  
Tottenham Court Road,  
Charing Cross Road,  
St. Martin's Place.  
Trafalgar Square.  
Charing Cross.  
Strand,  
Whitehall,

from Great Portland Street to Gower Street.  
from Goodge Street to St. Giles' Circus.  
from St. Giles' Circus to St. Martin's Place.

from Charing Cross to Agar Street.  
from Charing Cross to Whitehall Place.

Buckingham Palace Road,  
Victoria Street,  
Vauxhall Bridge Road,

from Victoria Street to Lower Belgrave Street.  
from Buckingham Palace Road to Carlisle Place.  
southwards for 300 feet from Victoria Street. [1076]

## EXPLANATORY NOTE

(This Note is not part of the Order but is intended to indicate its general purport.)

This Order suspends certain regulations made by the Minister of Transport under Section 10 of the London Traffic Act, 1924, which impose restrictions on vehicles with regard to waiting, loading and unloading in the Piccadilly Circus, Oxford Street and Wigmore Street areas and in Jermyn Street. In place of the regulations so suspended, the Order reimposes the restrictions with amendments.

The principal changes are :—

1. The restrictions apply to a number of additional streets not included in the suspended Regulations.

2. The sale of goods from a vehicle in a street to which the Order applies at any time on weekdays is now prohibited except under licence from a local authority to sell goods from a stationary pitch or where the goods are immediately delivered at premises in close proximity to the vehicle from which they are sold.

3. The restrictions on waiting, loading and unloading apply from 11.30 a.m. to 6.30 p.m. on every weekday except Saturday. Under the suspended Regulations, the restrictions applied on Saturdays from 12 noon to 3 p.m. in all cases, on other weekdays from 12 noon to 6 p.m. in Jermyn Street and to 7 p.m. in other streets.

4. The maximum period for which vehicles delivering or collecting goods are permitted to wait notwithstanding the restrictions is increased from 10 and 15 minutes to 20 minutes.

5. Additional classes of vehicles are exempted from the restrictions on waiting. These classes are the following :—

- (a) vehicles on to or from which goods are being loaded or unloaded, where such goods cannot reasonably be so loaded or unloaded outside the prescribed hours provided that 48 hours previous notice has been given to the police, their consent obtained and such reasonable conditions as they may impose are complied with.
- (b) fire engines, ambulances and any vehicles in the service of a local or police authority whilst being used as a matter of urgent necessity.
- (c) public service vehicles, trams or trolley-vehicles waiting at authorised stopping places or at turning or terminal points.
- (d) vehicles lawfully waiting on any duly authorised parking place.

## CASES

*Street and aerial traffic—Public carriage—Fare—Metropolitan police area—Journey exceeding six miles—Agreed fare in excess of prescribed rates—London Hackney Carriage Act, 1853 (c. 33), s. 17 (1) (2)—Metropolitan Public Carriages Act, 1869 (c. 115), s. 9 (3), restriction (2)—London Cab Order, 1934 (S. R. & O., 1934, No. 1346).*

A licensed taxicab driver, while plying for hire within the metropolitan police district, was hired by a passenger to convey her on a journey in excess of six miles, and it was orally agreed that the charge for the hire should be 12s. The amount shown on the meter at the end of the journey was 6s. 6d. The driver was convicted of demanding more than the proper fare, contrary to the London Hackney Carriage Act, 1853, s. 17 (1) :—

*Held* : in view of the terms of s. 17 of the London Hackney Carriage Act, 1853, of s. 9 of the Metropolitan Public Carriages Act, 1869, and of the London

Cab Order, 1934 (made by the Secretary of State under the Act of 1869), by which are fixed the fares for distance to be paid for hackney carriages within the metropolitan police district, those fares apply only to journeys not exceeding six miles, and, if a passenger wishes to be carried beyond that distance, the taxicab driver may make a bargain with regard to the fare, and, therefore, no offence had been committed by the driver in the present case, and the conviction should be quashed.

*Per cur.*: Section 44 of the London Hackney Carriage Act, 1831, may be regarded as obsolete.—GOODMAN *v.* SERLE, [1947] K. B. 808; [1947] 2 All E. R. 318; 177 L. T. 521; 111 J. P. 492; 63 T. L. R. 395; 91 Sol. Jo. 518; 45 L. G. R. 328, D. C. [1077]

## NATIONAL HEALTH AND UNEMPLOYMENT INSURANCE

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[N.B. July 5, 1948, is the appointed day for the commencement of the National Insurance Act, 1946, and so much of the National Health Service Act, 1946, as is not previously in force, see S.I. 1948 Nos. 54, 112.]

### ORDERS, CIRCULARS AND MEMORANDA

#### NATIONAL HEALTH SERVICE (EXECUTIVE COUNCILS) REGULATIONS, 1947

*S. R. & O.*, 1947, No. 889

May 12, 1947

The Minister of Health, in exercise of his powers under sections 41 and 79 of and the Fifth Schedule to the National Health Service Act, 1946, and of all other powers enabling him in that behalf, hereby makes the following regulations :—

#### PART I

##### *General*

1.—(1) These regulations may be cited as the National Health Service (Executive Councils) Regulations, 1947, and shall come into operation on the 15th day of May, 1947.

(2) These regulations shall not apply to the Isles of Scilly. [1078]



2.—(1) In these regulations, unless the context otherwise requires, the following expressions have the respective meanings hereby assigned to them :—

“ the Act ” means the National Health Service Act, 1946.

“ council ” means the Executive Council constituted for any area.

(2) The Interpretation Act, 1889, applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament. [1079]

*Appointment of members, term of office, casual vacancies, etc. .*

3.—(1) A local health authority, local medical committee, local pharmaceutical committee, or local dental committee shall forthwith give notice in writing to the Minister of the name and address of any person appointed by them to be an original member of a council and to the clerk of the council of the name and address of any other member appointed by them.

(2) The clerk of the council shall forthwith inform the Minister of the names and addresses of any members so notified to him. [1080]

4.—(1) The first chairman of the council shall hold office until the 31st day of March, 1949.

(2) Of the original members of the council, other than the chairman, one third shall retire on the 31st day of March, 1949, one third on the 31st day of March, 1950, and the remainder on the 31st day of March, 1951.

(3) The order of retirement of the original members under the preceding paragraph of this regulation shall be determined by lot at a meeting of the council held as soon as conveniently may be after the constitution of the council, the lots being drawn under the direction of the person presiding at the meeting.

(4) Subject as aforesaid, the term of office of members shall be three years :

Provided that at the expiration of his term of office a member shall be eligible for re-appointment. [1081]

5.—A council shall appoint a member to be vice-chairman, and any person so appointed shall, so long as he remains a member of that council, hold office for such period as may be specified in the resolution under which he is appointed. [1082]

6.—(1) A member of the council who desires to resign his membership thereof shall give notice in writing to the clerk of the council, or, in the case of the chairman, to the Minister.

(2) If a member of the council has not attended any meeting of the council or of any committee for a period of six months, the clerk of the council shall inform the council, and unless the council is satisfied that his absence was due to illness or other reasonable cause it shall declare that his seat on the council has become vacant. [1083]

7. Subject to paragraphs (ii), (iii) and (v) of the proviso to subsection (1) of section 59 of the Local Government Act, 1933, the provisions of paragraphs (b) and (c) of that subsection (which disqualify a person for being elected or being a member of a local authority if he has been adjudged bankrupt or made a composition or arrangement with his creditors or has been sentenced to imprisonment for not less than three months without the option of a fine) shall apply as if the section related to membership of a council. [1084]

8.—(1) If a casual vacancy occurs by reason of the death, resignation or disqualification of any member of the council appointed by the Minister the clerk of the council shall forthwith inform the Minister, and if the person whose seat is vacated was other than one appointed by the Minister he shall inform the clerk or secretary of the appointing body.

(2) If a casual vacancy occurs amongst the persons appointed by the Minister, he shall inform the clerk of the council of the name and address of the person appointed to fill the vacancy.

(3) If a casual vacancy occurs amongst the persons appointed by one of the bodies specified in regulation 3, it shall be filled by the same body. [1085]

9. Any person appointed to fill a casual vacancy shall hold office for the remainder of the term of office of the person in whose place he is appointed. [1086]

## PART II

### *Procedure of Executive Councils*

#### *General provisions*

10.—(1) At every meeting of the council, the chairman, if present, shall preside.

(2) If the chairman is absent from any meeting, the vice-chairman shall, if present, preside, and if the chairman and vice-chairman are both absent the members present at the meeting shall elect from among themselves a person to act as chairman for that meeting.

(3) Every question at a meeting of the council shall be determined by a majority of the votes of the members of the council present and voting on the question, and, in case of an equal division of votes, the chairman of the meeting shall have a second or casting vote. [1087]

11. Minutes of the proceedings at every meeting of the council and a record of the attendance of the members of the council shall be duly kept by the clerk. [1088]

12.—(1) The council shall appoint a person approved by the Minister to act as clerk of the council and shall also appoint such other officers as may be necessary. The resolution appointing the clerk shall embody the terms on which the appointment is made.

(2) When an officer has attained the age of 65 years he shall cease to hold his office :

Provided that a council may in exceptional circumstances, with the consent of an officer and of the Minister, by resolution extend his period of service for one year or any less period, and so on from time to time.

(3) The council shall pay to the clerk and to their other officers remuneration in accordance with scales from time to time approved by the Minister, or such remuneration as the Minister may in special circumstances authorise.

(4) No member of the council or person who has at any time in the previous twelve months been a member of the council shall be appointed to the office of clerk or any other paid office under the council. [1089]

13.—(1) The council shall appoint a committee to be called the finance committee which shall consist wholly of members of the council and may appoint such further committees as they think fit which shall consist either wholly or partly of members of the council as the council may determine, provided that at least a majority of the members of the committee shall be members of the council.

(2) Subject to the provisions of any regulations relating to the finance committee, the council may delegate to any committee any of the powers and duties of the council, and any resolution of the council appointing a committee shall define the powers and duties delegated to them and the term of office of the members :

Provided that—

(i) No expenditure shall be incurred by any committee without the consent of the council ; and

(ii) Every committee shall report their proceedings to the council at such times and in such manner as the council may direct.

(3) Every committee shall appoint a chairman and subject as aforesaid and to any standing orders of the council relating to committees the provisions of these regulations relating to the duties of their chairman and the provisions relating to the vice-chairman, and proceedings of councils shall apply to committees as they apply to councils, with the substitution of the committee for the council. [1090]

14. The council may make, vary, and revoke standing orders for the regulation of the proceedings and business of the council and of the committees and in particular—

- (a) for the times and places of the meetings of the council or committee which in the case of the council shall be held not less often than once in every three months ;
- (b) for due notice of the time and place of each meeting of the council or any committee and, subject to any exceptions which may be mentioned in the standing orders, of the business to be transacted thereat, to be given to members ;
- (c) for the suspension of a member who is guilty of persistent disorder ;
- (d) for providing that, subject to such exceptions and qualifications as may be specified in the standing orders, if a member has any pecuniary interest, direct or indirect, in any contract or proposed contract or other matter (not being a contract for the provision of one of the services mentioned in Part IV of the Act) and is present at a meeting of the council or committee at which the contract or other matter is the subject of consideration, he shall at the meeting, as soon as practicable after the commencement thereof, disclose the fact, and shall not take part in the consideration or discussion of, or vote on any question with respect to, the contract or other matter ;
- (e) for such number of members of the council or committee, not being less than one-third of the whole number, as the standing order may specify to form a quorum. [1091]

15. Nothing in this part of these regulations shall apply (except so far as it may be specifically applied) to a committee constituted for any purpose for which a committee is authorised or required to be appointed by any other provisions for the time being in force. [1092]

16. The council may provide itself with offices and in the case of a joint committee established under subsection (4) of section 31 of the Act, the constituent councils may provide the joint committee with offices. [1093]

### PART III

#### *Supplementary ophthalmic services*

17.—(1) Unless the Minister has by order made under subsection (4) of section 41 of the Act directed that that section shall cease to apply to the area of the council, the council shall appoint an ophthalmic services committee (in this part of these regulations referred to as “the committee”), which shall exercise on behalf of the council the duty of making arrangements for the testing of sight and for the supply of optical appliances.

(2) The committee shall make reports to the council at such times and in such manner as the council may direct. [1094]

18.—(1) The committee shall consist of sixteen members appointed as follows :—

- (a) eight members by the council from among the members of the council other than those appointed by the local medical committee ;

- (b) one medical practitioner by the council from among those members of the council appointed by the local medical committee ;
- (c) (i) three medical practitioners having the prescribed qualifications ;
- (ii) three ophthalmic opticians ; and
- (iii) one dispensing optician,

appointed respectively by such organisations as the Minister may recognise as composed of members of the professions concerned :

Provided that the number and proportion of members appointed may be varied with the consent of the Minister to meet local conditions.

- (2) The committee shall appoint a member to be chairman. [1095]

**19.—(1)** For the purpose of Part IV of and the Seventh Schedule to the Act and these regulations the expression “ medical practitioner having the prescribed qualifications ” means a medical practitioner who has—

- (a) completed an academic or post graduate course in ophthalmology approved by the committee hereinafter in this paragraph mentioned and received a diploma or certificate in respect of such course ; or
- (b) held for a period of 2 years an appointment as an ophthalmic surgeon or assistant ophthalmic surgeon on the staff of an eye hospital or a hospital having a special eye department ; or
- (c) held any appointment for a period of 2 years affording special opportunities for acquiring the necessary skill and experience of the kind required for the services to be rendered,

and who shall, to the satisfaction of the Minister acting on the advice of a committee to be recognised by him for the purpose of approving such qualifications, have had adequate, including recent, experience.

(2) The qualifications required by an ophthalmic optician for the purpose of Part IV of and the Seventh Schedule to the Act and these regulations shall be that—

- (a) he was in possession of one of the following diplomas or certificates :—
  - (i) The Fellowship Diploma of the British Optical Association ;
  - (ii) The Honours Fellowship Diploma of the British Optical Association ;
  - (iii) The Fellowship Diploma of the Worshipful Company of Spectacle Makers ;
  - (iv) The Honours Fellowship Diploma of the Worshipful Company of Spectacle Makers ;
  - (v) The Fellowship Diploma of the National Association of Opticians, if obtained subsequent to the 16th day of October, 1935 ;
  - (vi) The Fellowship Diploma of the Scottish Association of Opticians, if obtained subsequent to the 12th day of December, 1935 ;
  - (vii) The Membership Certificate of the Institute of Chemists—Opticians, if obtained subsequent to the 12th day of December, 1935 ; or
- (b) he was immediately before the appointed day an optician on the list of the Ophthalmic Benefit Approved Committee constituted under the National Health Insurance Act, 1936 ; or
- (c) he had been in practice as an ophthalmic optician, for fifteen out of the previous twenty years, including five years between the 1st day of October, 1930, and the 30th day of September, 1937.

and that he shall, to the satisfaction of the Minister acting on the advice of a committee to be recognised by him for the purpose of approving such qualifications, have had adequate, including recent, experience as an ophthalmic optician.

- (3) The qualifications required by a dispensing optician for the purpose

of Part IV of and the Seventh Schedule to the Act and these regulations shall be that—

- (a) he was in possession of one of the following diplomas or certificates :—
  - (i) any of the diplomas or certificates mentioned in sub-paragraph (a) of paragraph (2) of this regulation or the dispensing certificate of any of the examining bodies referred to in the said sub-paragraph ;
  - (ii) The Associate Diploma or the Fellowship Diploma of the Association of Dispensing Opticians ; or
- (b) he has passed the practical side of the final dispensing examination of the Association of Dispensing Opticians and has been engaged as a dispensing optician for a period of five years ; or
- (c) he has been engaged as an optician for ten out of the previous fifteen years, and for five years between the 1st day of October, 1930, and the 30th day of September, 1937,

and that he shall, to be satisfaction of the Minister acting on the advice of a committee to be recognised by him for the purpose of approving such qualifications, have had adequate, including recent, experience as a dispensing optician :

Provided that a person who is entitled to have his qualifications approved either under the last foregoing paragraph of this regulation or this paragraph shall only be entitled to have his qualifications approved either as an ophthalmic optician or as a dispensing optician. [1096]

20.—(1) A casual vacancy in the committee shall be filled by the appropriate body in accordance with the provisions of paragraph (1) of regulation 18.

(2) Any body other than the council filling a casual vacancy shall notify the clerk of the council of the name and address of the person appointed. [1097]

21. The clerk of the council shall act as clerk of the committee, and the council shall make available to the committee the services of such other officers as the committee may require. [1098]

22. The original members of the committee shall retire on the 31st day of March, 1949, and thereafter the term of office of members shall be one year :

Provided that at the expiration of his term of office a member shall be eligible for re-appointment. [1099]

23. Regulations 5, 6, 7, 9, 10 and 11 of these regulations shall apply to the ophthalmic services committee with the substitution in all cases of the committee for the council, and any standing orders made by the council under regulation 14 for the regulation of the proceedings and business of committees shall apply to the committee, with such modifications as the committee may with the council's approval consider necessary. [1100]

24. The council shall make available to the committee such office accommodation as the committee may require. [1101]

#### PART IV

##### *Subscriptions to, and payment of expenses of members attending meetings of an association of Executive Councils*

25. A council may pay any sum, not exceeding in respect of any year ten pounds or such higher amount as the Minister approves not exceeding twenty pounds, as a subscription to the funds of any association of councils whose objects are approved by the Minister, and also the travelling and subsistence expenses reasonably incurred by representatives not exceeding

in any case four in attending any meetings of any such association in accordance with rates prescribed under and for the purposes of paragraph 3 (c) of the Fifth Schedule to the Act. [1102]

\* \* \* \* \*

### EXPLANATORY NOTE

*(This Note is not part of the Regulations, but is intended to indicate their general purport.)*

*The regulations provide for the appointment and term of office of members of Executive Councils and for the procedure of the councils. They also provide for the setting up of an Ophthalmic Services Committee in the area of each Executive Council for the administration of the supplementary ophthalmic services, and prescribe the qualifications required to be held by doctors and ophthalmic and dispensing opticians who participate in those services.*

## NATIONAL HEALTH SERVICE ACT (APPOINTED DAY) ORDER, 1947

S. R. & O., 1947, No. 983

May 21, 1947

Whereas it is provided by the National Health Service Act, 1946, that certain provisions of that Act are to come into force on the appointed day, and the expression "appointed day" is defined by subsection (1) of section seventy-nine of that Act to mean such day as His Majesty may by Order in Council appoint, and it is provided by the said subsection that different days may be appointed for the purposes of different provisions of the said Act and for the repeal or amendment of different enactments by the said Act;

Now, therefore, His Majesty, in pursuance of the said subsection (1) of section seventy-nine of the said Act is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows :—

1. This Order may be cited as the National Health Service Act (Appointed Day) Order, 1947. [1103]

2. The following provisions of the National Health Service Act, 1946, and the following repeals and amendments made by that Act, shall come into force on the first day of July, nineteen hundred and forty-seven, that is to say :—

- (a) section forty-nine of the said Act ;
- (b) subsections (1) and (2) of section fifty of the said Act so far as they relate to such of the amendments and repeals specified in the Ninth Schedule to the said Act as are hereinafter mentioned ;
- (c) the following amendments and repeals specified in the said Ninth Schedule—

The Lunacy Act, 1890.  
53 & 54 Vict. c. 5.

The amendments of subsections (3) and (6) of section thirty-nine, sections fifty-one and one hundred and seventy-seven, section one hundred and ninety-one (except the last amendment of that section) and subsection (3) of section two hundred and four, the general amendment of Part VIII substituting for references to the Board of Control references to the Minister, the first amendment of subsection (1) of section two hundred and seventeen, the amendments of sections two hundred and twenty-one, two hundred and twenty-six,

two hundred and thirty-one, two hundred and thirty-seven and three hundred and twenty, the first amendment of subsection (1) of section three hundred and twenty-nine (which inserts after the words "Board of Control," in both places where they occur, the words "or the Minister"), the amendments of sections three hundred and thirty-two and three hundred and thirty-eight, and the amendment of section three hundred and forty-one inserting therein the definition of "the Minister";

The Lunacy Act, 1891.  
54 & 55 Vict. c. 65.

The amendment of section twelve ;

The Mental Deficiency Act, 1913.  
3 & 4 Geo. 5, c. 28.

The amendments of sections three and five, subsection (3) of section sixteen, sections twenty-one, twenty-three, twenty-four, subsection (1) of section twenty-five, section twenty-six, paragraph (h) of section thirty, sections thirty-six, forty-nine, fifty and fifty-eight, and the amendment in section seventy-one of the definition of "approved home"; and the repeal of paragraph (e) of subsection (1) of section twenty-five; and of section thirty-five;

The Mental Treatment Act, 1930.  
20 & 21 Geo. 5, c. 23.

The amendments of section one, paragraph (iii) of subsection (1) of section five, subsection (3) of section five, the proviso to subsection (9) of section five, subsection (17) of section five and section eleven; and the repeal of section twelve;

(d) section seventy-six of the said National Health Service Act, 1946, so far as it relates to such of the amendments specified in the Tenth Schedule to the said Act as are hereinafter mentioned;

(e) the following amendments specified in the said Tenth Schedule—

The Children and Young Persons Act, 1933.  
23 & 24 Geo. 5, c. 12.

The amendment of section ninety-two ;

The Public Health Act, 1936.  
26 Geo. 5 & 1 Edw. 8, c. 49.

The amendments of sections one hundred and ninety-nine and two hundred and nineteen ;

The Public Health (London), Act, 1936.  
26 Geo. 5 & 1 Edw. 8, c. 50.

The amendments of sections two hundred and seventy-one and three hundred and four ;

The Adoption of Children (Regulation) Act, 1939.  
2 & 3 Geo. 6, c. 27.

The amendment of section seven.

[1104]

3. Any reference in the last foregoing Article to amendments made by the National Health Service Act, 1946, in any provision of any enactment shall be construed as referring only to the amendments specifically directed by the said Act to be made in that provision, and not as referring to any general amendments directed by the said Act—

(a) to be made in all enactments relating to persons of unsound mind and mental defectives ;

(b) to be made throughout the Lunacy Act, 1890 ;

(c) to be made throughout the Mental Deficiency Act, 1913 ; or

(d) to be made throughout the Mental Treatment Act, 1930. [1105]



### EXPLANATORY NOTE

*(This Note is not part of the Order, but is intended to indicate its general purport.)*

*This Order brings into force on the 1st July, 1947, certain provisions of the National Health Service Act, 1946. The main provision is section 49 of the Act which transfers to the Minister of Health some of the administrative functions (set out in subsection (1) of the section) of the Board of Council under the Acts relating to mental treatment and mental deficiency. The section also provides for the transfer of officers and property, for the appointment to the Board of Control of an additional Medical Commissioner, and for certain minor administrative matters relating to the Board.*

*The Order also brings into force various amendments of the Acts relating to mental treatment and mental deficiency and a few other enactments. These amendments are made by sections 50 and 76 of the National Health Service Act, 1946, and the 9th and 10th Schedules to that Act. They are all consequential on the transfer of functions and other changes made by section 49 of the Act, which are referred to in the first paragraph of this Note.*

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## NATIONAL HEALTH SERVICE (CONSTITUTION OF REGIONAL HOSPITAL BOARDS) ORDER, 1947

S. R. & O., 1947, No. 1297

June 24, 1947

Whereas by section 11 (1) of the National Health Service Act, 1946, it is provided that the Minister of Health (hereinafter called "the Minister") shall by order constitute in accordance with Part I of the Third Schedule to that Act, boards, to be called Regional Hospital Boards, for such areas as he may by order determine ;

And whereas the Minister has by the National Health Service (Determination of Regional Hospital Areas) Order, 1946, determined that the areas set out in the schedule thereto and numbered respectively 1 to 14 shall be areas for which regional hospital boards shall be constituted :

Now therefore the Minister hereby orders as follows :—

1. This order may be cited as the National Health Service (Constitution of Regional Hospital Boards) Order, 1947, and shall come into operation on the date hereof. [1106]

2. A regional hospital board is hereby constituted for each of the said areas numbered 1 to 14 in the said schedule to the National Health Service (Determination of Regional Hospital Areas) Order, 1946, for the purpose of exercising functions with respect to the administration of hospital and specialist services. [1107]

3. The regional hospital board for each of the said areas numbered 1 to 14 in column (1) of the schedule to this order shall be known by the title set out in column (2) of the said schedule opposite the number in column (1). [1108]

4. Each board shall consist of a chairman appointed by the Minister and such number of other members as is shown in column (3) of the schedule hereto opposite the number of the area ; and the said members shall be appointed in accordance with the provisions of Part I of the Third Schedule to the National Health Service Act, 1946. [1109]

5. The original chairmen and members of the said boards appointed in accordance with article 4 of this order shall be the following :—

*[Here follows a list of the original chairmen, appointed for the period ending on March 31, 1950, and other members, variously appointed for periods ending on March 31, 1949, 1950 and 1951, of the fourteen regional hospital boards.]*  
**[1110]**

#### SCHEDULE

(1) Number of Area	(2) Title of Board	(3) Number of members (excluding Chairman)
1	The Newcastle Regional Hospital Area .. ..	29
2	The Leeds Regional Hospital Area .. ..	23
3	The Sheffield Regional Hospital Area .. ..	30
4	The East Anglian Regional Hospital Area .. ..	25
5	The North-West Metropolitan Regional Hospital Area	28
6	The North-East Metropolitan Regional Hospital Area	21
7	The South-East Metropolitan Regional Hospital Area	23
8	The South-West Metropolitan Regional Hospital Area	25
9	The Oxford Regional Hospital Area .. ..	22
10	The South Western Regional Hospital Area .. ..	28
11	The Welsh Regional Hospital Area .. ..	31
12	The Birmingham Regional Hospital Area .. ..	28
13	The Manchester Regional Hospital Area .. ..	28
14	The Liverpool Regional Hospital Area .. ..	23

**[1111]**

\* \* \* \* \*

### NATIONAL HEALTH SERVICE (REGIONAL HOSPITAL BOARDS, ETC.) REGULATIONS, 1947

*S. R. & O., 1947, No. 1298*

*June 24, 1947*

The Minister of Health, in exercise of his powers under sections 11 and 74 of and the Third Schedule to the National Health Service Act, 1946, and of all other powers enabling him in that behalf hereby makes the following regulations :—

1. These regulations may be cited as the National Health Service (Regional Hospital Boards, etc.) Regulations, 1947, and shall come into operation on the date hereof. **[1112]**

2.—(i) In these regulations “ the Act ” means the National Health Service Act, 1946, “ the Minister ” means the Minister of Health, “ hospital board ” means a regional hospital board, “ management committee ” means a hospital management committee and “ board of governors ” means a board of governors of a teaching hospital.

(ii) The Interpretation Act, 1889, applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament. **[1113]**

3.—(i) One third, as near as may be, of the original members of a hospital board shall be appointed for a period ending on the 31st day of March, 1949,

another third, as near as may be, for a period ending on the 31st day of March, 1950 and the remainder for a period ending on the 31st day of March, 1951.

(ii) Paragraph (i) of this regulation shall apply to the appointment of the original members of a management committee or a board of governors save that for the years 1949, 1950 and 1951 mentioned therein there shall be substituted respectively the years 1950, 1951 and 1952.

(iii) Subject as aforesaid the term of office of members of the said bodies shall be three years expiring on the 31st day of March in any year.

(iv) A member may resign on giving notice in writing to the Minister, or in the case of a member of a management committee, to the hospital board.

(v) A person appointed to fill a casual vacancy shall hold office for the remainder of the period for which his predecessor was appointed.

(vi) A member shall on the expiration of his term of office be eligible for re-appointment.

(vii) If a member has not attended a meeting of the board or committee to which he belongs or a committee or sub-committee thereof for a period of six months the Minister, or in case of a management committee the appropriate hospital board, shall unless satisfied that the absence was due to illness or other reasonable cause declare that his seat on the board or committee has become vacant.

(viii) Subject to paragraphs (ii), (iii) and (v) of the proviso to subsection (1) of section 59 of the Local Government Act, 1933, the provisions of paragraphs (b) and (e) of that subsection (which disqualify a person for being elected or being a member of a local authority if he has been adjudged bankrupt or made a composition or arrangement with his creditors or has been sentenced to imprisonment for not less than three months without the option of a fine) shall apply as if the section related to membership of a hospital board, management committee or board of governors.

(ix) A member, being either—

(a) A person who has held any paid appointment or office, or other place of profit in the disposal of a hospital board, management committee, board of governors, or local health authority and who has been dismissed from such appointment, office or other place of profit, or

(b) a person whose name has been included in any list prepared under Part IV of the Act, and whose name has been removed from the list under the provisions of section 42 of the Act,

shall forthwith cease to be a member.

(x) A member, being either—

(a) A person who has held any paid appointment or office, or other place of profit in the disposal of a hospital board, management committee, board of governors or local health authority, and who has resigned from such appointment, office or other place of profit, or

(b) a person whose name has been included in any list prepared under Part IV of the Act, and whose name has been withdrawn from the list on his own application,

shall, if the Minister so directs, forthwith cease to be a member.

(xi) If a hospital board, management committee, or board of governors shall pass a resolution that in their opinion the conduct of a member is prejudicial to the effective performance of the functions of the board or committee, that member shall, if the Minister so directs, cease to be a member.

4.—(i) A hospital board or a board of governors may, and if so directed by the Minister shall, appoint committees, and a management committee may, and if so directed by the Minister or the hospital board concerned shall, appoint sub-committees, in either case consisting wholly or partly of members of those bodies, for the exercise on their behalf of any of their functions, subject to such restrictions or conditions as they may think fit or as the Minister, or in the case of a management committee, the hospital board concerned may direct.

(ii) A body appointing a committee or sub-committee under this regulation, may, subject to such directions as may be given by the Minister or, in the case of a management committee by the hospital board concerned, make, vary and revoke standing orders respecting the quorum, proceedings and place of meeting of the committee or sub-committee, but subject to any such standing order the quorum, proceedings and place of meeting shall subject as aforesaid be such as the committee or sub-committee may determine. [1115]

5. The meetings and proceedings of a hospital board, management committee or board of governors shall be conducted in accordance with the rules set out in the schedule to these regulations. [1116]

## SCHEDULE

### RULES AS TO MEETINGS AND PROCEEDINGS OF HOSPITAL BOARDS, MANAGEMENT COMMITTEES AND BOARDS OF GOVERNORS

1. The first meeting shall be held on such day and at such place as may be fixed by the chairman, and shall be convened by him.

2. A vice-chairman may be elected who shall continue in office until the expiration of his term of membership.

3.—(i) At any meeting the chairman, if present, shall preside.

(ii) If the chairman is absent from the meeting the vice-chairman, if present, shall preside.

(iii) If both the chairman and vice-chairman are absent, such member as the members present shall choose shall preside.

4.—(i) The chairman may call a meeting at any time.

(ii) If the chairman refuses to call a meeting after a requisition for that purpose, signed by six members, has been presented to him, or if, without so refusing, the chairman does not call a meeting within seven days after such requisition has been presented to him, any six members may forthwith call a meeting.

(iii) Three clear days at least before a meeting, a summons to attend the meeting, specifying the business proposed to be transacted thereat, and signed by the chairman or by the secretary or clerk, shall be left at or sent by post to the usual place of residence of every member :

Provided that want of service of the summons on any member shall not affect the validity of a meeting :

Provided also that in the case of a meeting called by members in default of the chairman, the summons shall be signed by those members and no business shall be transacted at the meeting other than that specified in the summons.

5. Every question at a meeting shall be determined by a majority of the votes of the members present and voting on the question and, in the case of an equality of votes, the person presiding at the meeting shall have a second or casting vote.

6. The names of the members present at a meeting shall be recorded.

7. No business shall be transacted at a meeting unless at least one-fourth of the whole number of members are present.

8. The minutes of the proceedings of a meeting shall be drawn up and entered in a book kept for that purpose and shall be signed at the same or next ensuing meeting by the person presiding thereat, and any minute purporting to be so signed shall be received in evidence without further proof.

Act, 1908, shall apply to the meetings of a hospital board as they apply to the meetings of a local authority as defined by that Act.

10. A hospital board, management committee or board of governors shall make, and may vary or revoke standing orders for the regulation of their proceedings and business, which shall in particular include provision that, subject to such exceptions and qualifications as may be specified in the standing orders, if a member has any pecuniary interest, direct or indirect, in any contract or proposed contract or other matter and is present at a meeting at which the contract or other matter is the subject of consideration he shall at the meeting as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on any question with respect to, the contract or other matter. [1117]

\* \* \* \* \*

### EXPLANATORY NOTE

*(This Note is not part of the Regulations, but is intended to indicate their general purport.)*

*The regulations provide for the appointment and term of office of members of Regional Hospital Boards, Hospital Management Committees and Boards of Governors of teaching hospitals and for the proceedings of their meetings.*

## NATIONAL HEALTH SERVICE (TRAVELLING ALLOWANCES, ETC.) REGULATIONS, 1947

S. R. & O., 1947, No. 1330

June 26, 1947

The Minister of Health, in pursuance of his powers under the National Health Service Act, 1946, hereby makes the following regulations :—

1. These regulations may be cited as the National Health Service (Travelling Allowances, etc.) Regulations, 1947, and shall come into operation on the date hereof. [1118]

2.—(1) In these regulations, unless the context otherwise requires, the expression “Minister” means the Minister of Health, and the expression “the Act” means the National Health Service Act, 1946.

(2) The Interpretation Act, 1889, applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament. [1119]

3.—(1) The following bodies constituted under the Act, namely the Regional Hospital Boards, the Hospital Management Committees, the Boards of Governors of Teaching Hospitals and the Executive Councils, may make to their members or to the members of any committee thereof, and in the case of an Executive Council to the members of the Ophthalmic Services Committee payments in respect of loss of remunerative time in accordance with the rules contained in Part I of the Schedule hereto, payments in respect of travelling expenses in accordance with the rules contained in Part II of the said Schedule and payments in respect of subsistence expenses in accordance with the rules contained in Part III of the said Schedule :

Provided that payments in respect of travelling and subsistence expenses shall not be made by a Regional Hospital Board, a Hospital Management Committee, or a Board of Governors of a Teaching Hospital, unless the Minister shall be of the opinion that the special circumstances of the Board or Committee justify such payments and notify the Board or Committee accordingly :

Provided further that payments in respect of travelling and subsistence expenses shall not be made by an Executive Council unless the Minister shall be of the opinion that the special circumstances of the area of the Council justify such payments and notify that Council accordingly.

(2) Any reference in this regulation and in the Schedule hereto to a committee of a body shall be deemed where that body is itself a committee to be a reference to a sub-committee thereof. [1120]

4.—(1) The Minister may pay to the members of the Tribunal constituted under section 42 of the Act, to the members of the Medical Practices Committee and to the members of the Dental Estimates Board such remuneration for their services as he may, with the consent of the Treasury, determine, and may make to such members payments in respect of travelling and subsistence allowances in accordance with the rules contained in Parts II and III of the Schedule hereto.

(2) The Minister may make to members of the Central Health Services Council or any committee thereof and of any Standing Advisory Committee or any sub-committee thereof, payments in respect of loss of remunerative time in accordance with the rules contained in Part I of the Schedule hereto, payments in respect of travelling expenses in accordance with the Rules contained in Part II of the said Schedule and payments in respect of subsistence expenses in accordance with the rules contained in Part III of the said Schedule. [1121]

5. The making of any payment under these regulations shall be conditional on—

(a) certification by the member—

- (i) that, so far as travelling and subsistence allowances are concerned, the expenses were actually and necessarily incurred whilst engaged on the business of the National Health Service, and
- (ii) that any claim for payment in respect of loss of remunerative time is in respect of actual financial loss sustained whilst engaged on the business of the National Health Service ;

and on—

(b) the observance of such conditions as the body authorised to make the payment may, in their discretion or on the Minister's direction, call for or impose. [1122]

## SCHEDULE

### PART I

#### *Rules with respect to payments for loss of remunerative time*

The sum paid shall not exceed such amount as is required to indemnify a member against loss of remunerative time in attending meetings of the body or any committee thereof or incurred on business approved by the body or committee to which the member belongs and shall in no case exceed 20s. for any one day of 24 hours. [1123]

### PART II

#### *Rules with respect to the payment of travelling expenses*

1. The payment shall be made in respect of expenses incurred by a member in attending meetings of the body or committee to which the member belongs or in travelling on business approved by the body or committee.

2. Except as provided in paragraph 7 below the sum paid shall not exceed the amount disbursed by the member.

3. First-class fares shall be payable but members shall take the fullest possible advantage of any available cheap fares.

4. Subject as provided in the next following paragraph, taxi or car fares shall not be paid if an adequate public service is available but a member using a taxi or cab shall be entitled to claim the sum he would have been paid had he travelled by such a service.

5. Taxi or cab fares shall be payable in cases of urgency or in other cases in which transport is reasonably required and an adequate public service is not available.

6. A member making an overnight journey by rail and engaging sleeping car accommodation may receive the cost but any subsistence allowances payable to him for that night shall be reduced by one-third.

7. If the member uses his private motor vehicle in circumstances which involve a substantial saving in his time and are otherwise reasonable, or where it is in the interests of the body that the member should use his private motor vehicle in preference to a public service, the following mileage allowances shall be payable :—

*Motors cars* 6d. a mile for the first 2,880 miles in any year and thereafter 3d. a mile.

*Tri-cars* 3d. a mile for all mileage covered.

*Motor cycles* (with or without side-cars) 2½d. a mile.

*Motor-assisted pedal cycles and vehicles of similar type* 1½d. a mile.

If a member uses a private motor vehicle in circumstances where travel by a public service would be appropriate, a mileage allowance of 1½d. a mile shall be payable, irrespective of the type of vehicle.

Where other members are conveyed in the same vehicle on the business of the National Health Service, and where their fares by a public service would otherwise be payable under these regulations, an allowance of ½d. a mile for each passenger carried shall be payable.

8. In this part of this Schedule "public service" refers to railways, steamships, omnibuses and tramways. [1124]

### PART III

#### *Rules with respect to the payment of subsistence allowances*

1. An allowance not exceeding 30s. shall be payable in respect of each night when a member is necessarily absent from his home or place of business on the business of the body or committee. The allowance shall be reduced to 25s. 6d. a night after the first seven nights at one place, and any case in which a member is likely to spend, or does spend, more than 28 nights in one place shall be reported to the Minister who shall fix a special rate in accordance with the circumstances.

2. A night allowance shall be deemed to cover a single period of absence of 24 hours.

3. A day allowance in respect of duties not involving a night's absence shall be payable at the rate of 3s. 6d. when a member is necessarily absent from his home or place of business for more than five hours but not more than eight hours and at the rate of 8s. 4d. when his absence exceeds eight hours. [1125]

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## NATIONAL HEALTH SERVICE (MENTAL DEFICIENCY) AMENDMENT REGULATIONS, 1947

*S. R. & O., 1947, No. 1359*

*June 30, 1947*

The Minister of Health, in exercise of the powers conferred on him by the Mental Deficiency Acts, 1913 to 1938, hereby makes the following regulations :—

1.—(1) These regulations may be cited as the National Health Service



(Mental Deficiency) Amendment Regulations, 1947, and shall come into operation on the first day of July, 1947.

(2) The Interpretation Act, 1889, applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament. [1126]

2. The Mental Deficiency Regulations, 1935, shall be amended in manner following :—

- (1) At the end of paragraph (1) of regulation 3 there shall be added the definition “ ‘ the Minister ’ means the Minister of Health ’.
- (2) The word “ Minister ” shall be substituted for the word “ Board ” in regulations 10, 12, 22, 23, 24, 25, 27, 29, 31, 32, 34, paragraphs (1) and (2) of 46, 54, 56, 58, 60, 80 and 86.
- (3) In paragraph (4) of regulation 46 the words “ the Minister ” shall be inserted immediately before the words “ the Board ” where the latter words first occur, and the words “ the Minister or ” shall be inserted immediately before the words “ the Board ” where those words occur elsewhere in the said paragraph.
- (4) The words “ the Minister or ” shall be inserted before the words “ the Board ” in regulation 79.
- (5) Sub-paragraph (h) of paragraph (1) of regulation 42 shall be rescinded and at the end of the regulation there shall be added the following paragraphs :—

“ (3) The superintendent of an institution or certified house shall, where weekly returns are not required by the Minister, send to him immediate notice of the outbreak of any infectious disease and its nature and, where weekly returns are required by the Minister, immediate notice of any outbreak of any infectious disease of exceptional severity or unusual character.

(4) The superintendent shall, if so required by the Minister, furnish him with copies of all entries or of any particular entry in any official book relative to a patient who is or has been resident.”

- (6) The words “ Minister of Health ” shall be substituted for the words “ Board of Control ” in Forms A1, A2, A3, C1, C2, C3, C4, C5, C6, P4 and P5 in the Schedule.
- (7) For the attestation clauses in Forms A2, C2 and C5, there shall be substituted the following clause :—  
“ Given under the official seal of the Minister of Health this day of ”.
- (8) Words in the singular shall be substituted for words in the plural so far as may be necessary in consequence of the provisions of this regulation. [1127]

\* \* \* \* \*

### EXPLANATORY NOTE

*(This Note is not part of the Regulations, but is intended to indicate their general purport.)*

*The Regulations make such amendment of the Mental Deficiency Regulations, 1935, as is required by reason of the transfer of functions from the Board of Control to the Minister of Health by Part V of the National Health Service Act, 1946.*

# NATIONAL HEALTH SERVICE (MENTAL TREATMENT) AMENDMENT RULES, 1947

S. R. & O., 1947, No. 1360

July 1, 1947

The Board of Control, in exercise of the powers conferred on them by subsection (1) of section 388 of the Lunacy Act, 1890, as extended by section 15 of the Mental Treatment Act, 1930, and amended by section 50 of the National Health Service Act, 1946, and with the approval of the Minister of Health, and the concurrence of the Lord Chancellor, hereby make the following rules :—

1.—(1) These rules may be cited as the National Health Service (Mental Treatment) Amendment Rules, 1947, and shall come into operation on the first day of July, 1947.

(2) The Interpretation Act, 1889, applies to the Interpretation of these rules as it applies to the interpretation of an Act of Parliament. [1128]

2. The Mental Treatment Rules, 1930, shall be amended in manner following :—

- (1) Immediately after the definition of “ medical officer ” in rule 2 there shall be inserted the following definition :—“ Minister ” means the Minister of Health ’.
- (2) The expression “ the Minister ” shall be substituted for the expression “ the Board ” wherever the latter occurs in rules 11, 92, 128, 129, 130, 131 and 132.
- (3) The words “ Minister or the ” shall be inserted immediately before the word “ Board ” wherever that word occurs in rules 78, 90 and 91.
- (4) The expression “ the Minister ” shall be substituted for the word “ them ” in paragraph (2) of rule 92.
- (5) The expression “ the Minister of Health ” shall be substituted for the expression “ the Board of Control ” in Forms 3, 4 (17th Column) and 5 in the Schedule. [1129]

\* \* \* \* \*

## EXPLANATORY NOTE

(This Note is not part of the Rules, but is intended to indicate their general purport.)

The rules make such amendment of the Mental Treatment Rules, 1930, as is required by reason of the transfer of functions from the Board of Control to the Minister of Health by Part V of the National Health Service Act, 1946.

Circular 109/47.

To : County Councils and  
County Borough Councils  
(England). For action.  
All other Local Authorities  
(England). For information.

MINISTRY OF HEALTH,  
WHITEHALL,  
LONDON, S.W.1.  
16th June, 1947.

SIR,

NATIONAL HEALTH SERVICE ACT, 1946

*Health Services to be provided by Local Health Authorities  
under Part III of the Act*

*Ambulance Service (Section 27)*

- (i) *Combination with Fire Service*
- (ii) *Police Ambulances*

1. With reference to paragraphs 17 and 19 of Circular 66/47 of 3rd April last, in which it was stated that further guidance would be given to Local

Health Authorities about (i) the combination of the Ambulance Service with the Fire Service ; and (ii) Police Ambulances, I am directed by the Minister of Health to submit the following observations :—

2. *Combination with Fire Service.*—It is understood that, subject to the decision of Parliament on the Fire Services Bill which is now under consideration, the transfer of the Fire Service to County Councils and County Borough Councils will probably take effect before 5th July, 1948, which is likely to be the appointed day for the purposes of the National Health Service Act. As indicated in paragraph 17 of Circular 66/47, it is for the Local Health Authority to decide whether they will include complete or partial combination of the Ambulance Service with the Fire Service in the proposals they submit under Section 27 of the National Health Service Act. Whether such combination would make for the efficiency of the Ambulance Service will, no doubt, depend largely on local circumstances. There is an obvious similarity between the two services in that both require vehicles, stations and a call system which have to be manned day and night ; and complete or almost complete combination of the two services should normally result in a saving of manpower and, save in exceptional circumstances, in each service providing a useful reserve for the other. (It would of course be necessary that the total personnel establishment should be sufficient to cover the reasonable needs of both services.) On the other hand, complete combination would imply that the ambulance drivers and attendants would be members of the Fire Service and would thus have to satisfy the same physical requirements (which some existing ambulance personnel would be unable to do), undergo the same training, and be subject to the same conditions of employment as firemen ; and partial combination resulting in the use of the same officers, stations and call system for both services, but leaving the ambulance drivers and attendants as a separate establishment, might give rise to difficulties in control and discipline, especially if the ambulance drivers and attendants were subject to different conditions of employment from the firemen. It is for the Local Health Authority to determine, in the light of their local knowledge and experience, whether the advantages of combination (complete or partial) outweigh the disadvantages. For his part, the Minister will be prepared favourably to consider proposals involving combination if the Local Health Authority are satisfied that this would make for efficiency and would not lead to the Ambulance Service being regarded as a subsidiary of the Fire Service and, therefore, of secondary importance.

3. It is realised that the Local Health Authority's proposals under Section 27 are due to be submitted to the Minister before the Fire Services Bill becomes law, and that any suggested combination of the services must be expressed to be contingent on the transfer of the Fire Service to the County Council or County Borough Council ; it is also realised that until the constitution of the Fire Brigade Committee, and the appointment of a Chief Fire Brigade Officer, detailed arrangements for combination cannot be formulated. If, therefore, the Local Health Authority proposes to operate its Ambulance Service in combination with the Fire Service, it will be sufficient to indicate, in reply to paragraph 1 of Part II of Appendix B to Circular 66/47, that it is the Authority's intention to combine the services, and to give in broad outline the degree of combination proposed. It will, however, be necessary to state at which stations and in what numbers ambulances and sitting-case cars will be provided, and to this end the Council should at once consult with the Chief Regional Fire Officers of the National Fire Service to whom a communication is being sent from the Home Office. Subsequently, when the arrangements have been worked out in detail, full particulars will need to be communicated to the Minister.

4. If, however, the Local Health Authority desire to defer consideration of the question of combining the two services and, in the meantime, to

organise existing resources into a separate Ambulance Service for an interim period, the submission of that part of the proposals which describes the Development Plan—paragraph 2 of Part II of Appendix B to Circular 66/47—may be deferred until a decision has been arrived at, provided that the interim period does not exceed twelve months from the appointed day for the purposes of the National Health Service Act.

5. *Police Ambulances*.—As foreshadowed in paragraph 19 of Circular 66/47, the Minister has agreed with the Secretary of State that it is desirable that all ambulances at present operated by the Police should be transferred to the Local Health Authority with effect from the appointed day for the purposes of the National Health Service Act. It will not be possible for the Police to transfer the staff at present operating these ambulances, except perhaps in cases where this staff are not members of the Police Force. In cases where non-Police Ambulance drivers and attendants are served by the employing authority with notice of dismissal it will be for the Local Health Authority to offer re-employment in their service as from the appointed day.

6. No financial adjustment, other than the transfer of outstanding loan debt, if any, in respect of ambulances and associated equipment transferred will be involved between the Police account and the Local Health Authority's account. [1130]

\*                      \*                      \*                      \*                      \*

I am, Sir, etc.

\*                      \*                      \*                      \*                      \*

The Clerk of the Council.  
The Town Clerk.

*Note*.—The "appointed day" for the purposes of the Fire Services Act, 1947 (title FIRE PROTECTION, *ante*) is April 1, 1948 (see S.I. 1948 No. 325) and that for the National Health Service Act, 1946 (39 Halsbury's Statutes 515 *et seq.*) is July 5, 1948 (see S.I. 1948 No. 112).

### Circular 134/47.

MINISTRY OF HEALTH,

WHITEHALL,

LONDON, S.W.1

8th August, 1947.

To : *County Councils*  
*County Borough Councils*  
*Borough Councils*  
*Urban District Councils*  
*Rural District Councils* } (for information)  
*Joint Hospital Boards*  
*Joint Mental Hospital Boards*  
*Mental Hospital Visiting Committees.*

SIR,

#### NATIONAL HEALTH SERVICE ACT, 1946. ADMINISTRATION OF HOSPITAL SERVICES AFTER THE APPOINTED DAY—AGENCY ARRANGEMENTS WITH LOCAL AUTHORITIES

1. I am directed by the Minister of Health to inform you that he has been considering, in order to effect a smooth transition when responsibility for administering the hospital service is transferred to the Boards on the appointed day (5th July, 1948), what arrangements should be made in those cases where local authorities have wholly or partly centralised their hospital services. The Minister is aware that a number of local authorities have, to a greater or less extent, centralised arrangements for the provision of certain of these services, in particular such branches as supply, accounting and the maintenance of premises and land; and he understands that these authorities and the Regional Hospitals Boards would each welcome early information on the position likely to arise on the appointed day.

2. Responsibility for the control and management of the hospital services, including the kinds of services which may have been centralised as above, will—except in the case of teaching hospitals—rest on and from the appointed day with the Hospital Management Committees to be constituted under section 11 of the Act, as agents of the Regional Hospital Boards. But it is unlikely that the Management Committees will be appointed before the early part of next year and they would therefore find very considerable difficulty, in the short time then available before the appointed day, in completing arrangements for the provision on a different basis of services not hitherto localised in the hospitals themselves.

3. It is therefore proposed that the Regional Boards, or the Management Committee as their agents, and the local authorities should together arrange by agreement for the latter to continue to operate, on an agency basis, any existing centralised services for hospital purposes for an interim period (in the first instance for the nine months from the appointed day to the 31st March, 1949), whenever they find this the best and simplest course. The Minister would be glad if local authorities would then proceed on this basis in considering questions of staffing, the ordering of supplies, etc., and would assist Regional Hospital Boards or Management Committees wishing to make interim arrangements of this nature. The full cost of any agency services so provided, including overhead expenses, should of course be reimbursed, on the principle that there would be neither a loss nor a profit to the general rate or county fund.

4. Local authorities with whom agency arrangements are made will no doubt require to retain for the period the services of some of the staff due normally to be transferred to the Regional Boards under section 68 of the National Health Service Act. These officers, to protect their rights under that section, will be transferred on the appointed day to the employment of the Boards, but the Boards will be asked to arrange for them to remain for the time being seconded to the service of the local authorities. This arrangement will also no doubt assist the local authorities to complete their own accounts for the period to the appointed day and to wind up other transferred functions : but it will then entail, when officers are so employed, an apportionment of costs between the general rate or county fund and the Exchequer.

5. Joint Boards, including Mental Hospital Boards, are due to be dissolved on the appointed day by section 78 (1), but the Minister would be glad if they also would proceed on the basis that centrally provided services will continue to be provided by the present machinery under the control of the Regional Hospital Board or Boards to which their functions will be transferred, if those Boards so desire. [1131]

I am, Sir, etc.

\* \* \* \* \*

The Clerk of the Authority.

## OFFICERS OF LOCAL AUTHORITIES

STATUTES :—	PAGE		PAGE
National Service Act, 1947, s. 21	379	under the National Service Act,	
ORDERS, CIRCULARS AND MEMORANDA :—		1947, ss. 21 and 25 (2)	379
Order fixing an Appointed Day		Circular 96/47 : Reduction of Local Authority Staffs	380

## STATUTES

## NATIONAL SERVICE ACT, 1947

(10 &amp; 11 Geo. 6, c. 31)

*An Act to confine the operation of the National Service Acts to male British subjects and to service in the armed forces of the Crown ; to make provision as to the terms and conditions of such service and as to the period for which those Acts shall continue in operation ; and for purposes connected with the matters aforesaid.* [1132]

[18th July, 1947.]

\* \* \* \* \*

**21. Termination of power to make up civil remuneration.**—(1) The power conferred by section one of the Local Government Staffs (War Service) Act, 1939, to make payments to or in respect of a person ceasing to serve in his civil capacity in order to undertake war service shall not be exercisable in respect of any person who ceases so to serve after such date as may be specified by order of the Minister of Health. [1133]

(2) This section shall come into force on the passing of this Act. [1134]

*Local Government Staffs (War Service) Act, 1939, s. 1.*—32 Halsbury's Statutes 1118. This section provides that, where a person serving in any capacity specified in the first column of the Schedule to that Act ceases so to serve in order to undertake war service, the employing authority specified in the second column of the said Schedule shall have power to make up his civil pay on the conditions set forth in that Act. S. 14 (1) of the same Act defines war service as service of specified kinds during the period of the present emergency.

In view of the changes of system introduced by the present Act, the Minister of Health is empowered to specify a limiting date, but it is important to note that the date in question is the date when a person's service in his civil capacity ceased ; that is to say, while pay may no longer be made up in the case of persons whose service in a civil capacity ceased after the specified date, there would appear to be no bar to continuing the make-up of pay after the specified date to persons ceasing to serve in a civil capacity before that date.

*Order of the Minister of Health.*—See *infra*.

*Passing of this Act.*—July 18, 1947.

\* \* \* \* \*

## ORDERS, CIRCULARS AND MEMORANDA

ORDER FIXING AN APPOINTED DAY UNDER THE  
NATIONAL SERVICE ACT, 1947, Ss. 21 and 25 (2)

S. R. &amp; O., 1947, No. 1611

July 28, 1947

Whereas by section 21 and subsection (2) of section 25 of the National Service Act, 1947, it is provided that the power conferred by section 1 of the Local Government Staffs (War Service) Act, 1939 to make payments to or in respect of a person ceasing to serve in his civil capacity in order to undertake war service shall not be exercisable in respect of any person who ceases so to serve after such date as may be specified by an order made, in relation to England and Scotland, by the Minister of Health and the Secretary of State jointly :

Now therefore the Minister of Health and the Secretary of State, in joint exercise of the powers conferred by the said section 21 and subsection (2) of section 25, hereby order that the thirty-first day of July 1947 shall be the date specified for the purpose of the said section 21. [1135]

\* \* \* \* \*

Circular 96/47.

*To County Councils,  
Common Council of the City of  
London,  
Metropolitan Borough Councils,  
County Borough Councils,  
Borough Councils,  
Urban District Councils,  
Rural District Councils,  
Joint Sewerage Boards,  
Joint Water Boards,  
Mental Hospital Boards.*

MINISTRY OF HEALTH,  
WHITEHALL,  
LONDON, S.W.1.  
3rd June, 1947.

SIR,

## REDUCTION OF LOCAL AUTHORITY STAFFS

I am directed by the Minister of Health to draw the attention of your authority to the Economic Survey for 1947 (Cmd. 7046), in which the Government sets out its conclusions on the economic state of the nation, and fixed targets and objectives for 1947. The White Paper pointed out that one of the main problems was to expand the nation's labour force, to increase its output per man-year and, above all, to get men and women where they were needed most. To carry out the national objectives set out in the White Paper, a reduction between December, 1946 and December, 1947 of 80,000 was assumed in the number employed in national and local government.

2. The Government are taking steps to reduce the increasing demands made by the civil staffs of Government Departments on national manpower, so far as possible without detriment to the discharge of the duties resulting from Government policy. They consider that similar action should be taken in the local government service.

3. The Minister accordingly invites your authority to undertake an immediate review of the organisation and staffing of all departments and services for the administration of which they are responsible, with the object of effecting all possible economies and making the fullest practicable reduction in the numbers employed. The Government have found that in the field of Central Government the need for action to improve management and organisation is continuous, and they are energetically pursuing administrative economies wherever practicable. They consider that, notwithstanding improvements already effected, there may be scope in the field of local government for similar action, *e.g.*, in improved methods of working within departments, in inter-changeability of staffs between departments and in amalgamation of departments which had hitherto been organised as separate units. Other methods will no doubt occur to the authority according to the circumstances of the particular department or service. The recruitment of new staff to replace those retiring or resigning should not be undertaken unless and until it is clear beyond any doubt that the employment of new staff is essential.

4. The Government recognises that local authorities are being called upon to undertake a substantial amount of work in connection with the planning and execution of services which constitute essential parts of the national reconstruction programme, and that the amount of progress which can be made is largely conditioned by the availability of staff. Every endeavour will accordingly be made, in carrying out the Government's policy, to limit the demands made upon local authorities to what is reasonable, and it is the desire of the Government to simplify as far as possible the administrative arrangements as between the Departments and the local authorities in con-



nection with these services. The Association of Local Authorities are being consulted as to the most effective means of securing this object.

5. The Minister will be glad to be informed as soon as possible, and in any case not later than 31st July next, of the result of your authority's review, and, in particular, to be furnished with a statement showing the total number of staff employed by them on the 31st March, 1947, and the total numbers they budget to employ on the 30th September, 1947, and the 31st March, 1948, respectively. [1136]

I am, Sir, etc.

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The Clerk of the Authority.

## OPEN SPACES

STATUTES —

Forestry Act, 1947

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### STATUTES

#### FORESTRY ACT, 1947

(10 & 11 Geo. 6, c. 21)

#### PRELIMINARY NOTE

The principal purpose of the Forestry Act, 1947, which received the Royal Assent on March 27, 1947, is to implement a scheme for the dedication of land for timber production. This Note and the annotation that follows sets out the position in England and Wales.

The importance to the country of its resources of growing timber became apparent as a result of the 1914-1918 war, during which very heavy felling operations took place. Replanting had not, however, replaced the serious depletion of our forests before further heavy felling began again in 1939. During the Second World War approximately 50 per cent. of the country's standing timber was felled, the greater proportion of which came from private woodlands, since the land planted by the Forestry Commission, established in 1919, had not had time to come into production to any large extent. As a result, there is a serious shortage of nationally-grown timber which threatens not only the post-war building programme, but also, in the event of future war, national security.

To deal with this situation, the Forestry Commissioners in their report on Post-War Forest Policy (Cmd. 6447) stated that they considered necessary a policy of large-scale and systematic forestry, which would gradually raise the acreage of woods and forests in Great Britain from the present two million acres to a total of five million acres by the end of the century. They proposed, as one of the methods of implementing such a policy, the adoption of a scheme for the dedication of private woodlands to timber production, the scheme being designed to encourage owners to replant their lands. Details of the proposed scheme were worked out by the Commissioners in consultation with representatives of the societies and associations interested in woodlands and are set out in the Supplementary Report presented by the Commissioners (Cmd. 6500) which was accepted by the Government.

The basis of the scheme is that, in return for an owner dedicating his land to the growing of timber and entering into certain undertakings, namely, to use the land primarily for timber production, to work to an approved plan, to employ skilled supervision and to keep adequate accounts, there should be State assistance both in the form of advice and of grants or loans. Preliminary inquiries made by the Commissioners to ascertain the number of woodland owners likely to enter into dedication covenants showed offers on behalf of 590 persons relating to a total of 329,500 acres, consisting of 205,000 acres in England, 113,000 acres in Scotland and 11,500 acres in Wales.

A legal essential of the scheme is that it should be possible for land to be dedicated

in perpetuity for growing timber, and that the dedication should be enforceable against successors in title of the dedicating owner. This is effected by s. 1 of the present Act by an application of the law as to the enforcement of restrictive covenants. Limited owners, of course, may not have power to dedicate land in perpetuity, and accordingly s. 2 confers powers to do this on certain classes of limited owners.

The Act does not control the working of the plan of operations, although reference is made in s. 5 (1) to that plan. The intention is that an act of dedication by an owner shall include his entering into an undertaking "to work to a plan, to be approved by the forest authority, which will lay down the main operation to be undertaken" (Cmd. 6500, paragraph 8 (2)). Thus the mutual rights and obligations of the parties as to forestry work rest upon the undertaking by the dedicating owner and not upon the Act. These obligations are not made to run with the land, but failure to observe them may be followed by exercise of the power of compulsory acquisition conferred by the Forestry Act, 1945, s. 4 (38 Halsbury's Statutes 18). The effect of s. 5 (1) of the present Act is merely to except from the scope of the power of compulsory acquisition land subject to a forestry dedication covenant in respect of which the plan of operations is observed.

It is very material to owners to consider the deductions that are to be made from the compensation payable if the power of compulsory acquisition is exercised in relation to land subject to a forestry dedication covenant. These deductions extend to advances by way of grant, as distinct from loans, made by the Commissioners after the passing of the Act or within two years thereof, except any advances made more than thirty years before the date of service of the notice to treat. In addition to the capital amount of the advances, compound interest also is deductible, calculated from the date of the advance at 3 per cent. per annum with yearly rests. The method of recovery of these advances and interest is limited to deduction from compensation on compulsory purchase (s. 6). Provision is made for determining by arbitration any question as to whether or not there has been a breach of a plan of operation (s. 5 (2)).

The form of State assistance to be given to a dedicating owner was described by the Joint Parliamentary Secretary to the Ministry of Agriculture and Fisheries on the Second Reading of the Bill in the House of Lords, as follows :—

"The owner can choose between two forms of financial assistance. Under Basis I he would receive 25 per cent. of the approved net annual expenditure on the dedicated woodlands. This payment would stop when the woodlands were self-supporting. Under Basis II he would receive £10 per acre for every acre planted or replanted, whether with hardwoods or softwoods. This rate of grant for planting would come up for reconsideration in five years' time, according to the conditions then obtaining. In addition, under Basis II there would be a maintenance grant for fifteen years for new plantations. This would be at the rate of 3s. 4d. per acre per annum for five years from now, and it would be reconsidered in the light of the circumstances then obtaining. Further, a similar maintenance grant will be payable from the date of dedication in respect of all productive woodlands other than new plantations already mentioned. For these schemes of replanting a plan of operation would be drawn up by the owner and would be approved, if suitable, by the Forestry Commission. These plans would of course have to be followed. Loans can be made available on both bases up to an amount to be fixed with reference to individual circumstances. Each loan, with compound interest at 3 per cent. per annum, would be repayable by annual instalments over a fixed period"

(144 H. of L. Official Report 520). [1137]

## ARRANGEMENTS OF SECTIONS

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*An Act to provide for the dedication of land to forestry purposes; for the deduction from compensation of grants made by the Forestry Commissioners in the event of compulsory purchase of the land in respect of which the grants were made; and for the execution on behalf of the Secretary of State of instruments relating to land placed at the disposal of the Forestry Commissioners.* [1138]

[27th March, 1947.]

*Forestry dedication covenants (England)*

**1. Forestry dedication covenants and enforcement thereof.**—(1) In this Act the expression “forestry dedication covenant” means a covenant entered into with the Forestry Commissioners (in this Act referred to as “the Commissioners”) to the effect that land shall not, except with the previous consent in writing of the Commissioners or, in case of dispute, under direction of the Minister of Agriculture and Fisheries, be used otherwise than for the growing of timber (within the meaning of section three of the Forestry Act, 1919) in accordance with the rules or practice of good forestry or for purposes connected therewith, being a covenant not containing any expression of intention contrary to the application of section seventy-nine of the Law of Property Act, 1925 (which provides that, unless a contrary intention is expressed, a covenant relating to any land of a covenantor or capable of being bound by him shall be deemed to be made by the covenantor on behalf of himself or his successors in title and the persons deriving title under him or them). [1139]

(2) As respects the enforcement of a forestry dedication covenant against persons other than the covenantor the Commissioners shall have the like rights as if they had at all material times been the absolute owners in possession of ascertained land adjacent to the land in respect of which the covenant is sought to be enforced and capable of being benefited by the covenant, and the covenant had been expressed to be for the benefit of that adjacent land. [1140]

(3) Section eighty-four of the Law of Property Act, 1925 (which confers power to discharge or modify restrictive covenants) shall not apply to a forestry dedication covenant. [1141]

(4) This section shall not extend to Scotland. [1142]

*Effect of section.*—See Preliminary Note, *ante*.

*Forestry Commissioners.*—The Forestry Commissioners were originally appointed under the Forestry Act, 1919, s. 1 (3 Halsbury's Statutes 443), but since the passing of the Forestry Act, 1945 (38 Halsbury's Statutes 16), which provided for the reconstitution of the Forestry Commission, they have been appointed under s. 1 of that Act. They are appointed by His Majesty to a maximum number of ten, including the chairman. At least three of their number are to have special knowledge and experience of forestry and at least one is to have scientific attainments and a technical knowledge of forestry.

*Direction of the Minister of Agriculture and Fisheries.*—The words “or, in case of dispute, under direction of the Minister of Agriculture and Fisheries” were inserted by an amendment moved by the Government on the Report stage of the Bill in the House of Lords. This was done as a result of the views expressed in Committee that to provide that consent to the user of dedicated land for purposes other than the growing of timber might be granted only by the Forestry Commissioners was unduly restrictive. It was argued that since the interest of the Commissioners was confined to the growing of timber they would be unlikely to consent to a proposal for a change of user which, regarded from a wider aspect, might be highly desirable in the light of some other national or economic interest. The amendment accordingly provides that in the event of a dispute as to change of user the matter may be determined by a direction of the Minister of Agriculture and Fisheries. It may be noted that, by the Forestry Act, 1945, s. 2 (38 Halsbury's Statutes 17), the Commissioners are, in exercising their functions, to comply with any directions given by the Minister.

*Sub-s. (2).*—The effect of this subsection is to make forestry dedication covenants enforceable as if they were restrictive covenants the benefit and burden of which run with the land under the equitable doctrine of *Tulk v. Moxhay* (1848), 2 Ph. 774; 40 Digest 313, 2667. The subsection may be compared with other statutory provisions designed to make covenants run with the land; see the Town and Country Planning Act, 1932, s. 34 (2) (25 Halsbury's Statutes 506), the Town and Country Planning Act, 1944, s. 3 (4) (37 Halsbury's Statutes 428), and the Water Act, 1945, s. 15 (2) (38 Halsbury's Statutes 507). The essential elements necessary to the enforcement of restrictive covenants under the general law were stated by FARWELL, J., in *Zetland (Marquis) v. Driver*, [1939] Ch. 1, at p. 8; [1938] 2 All E. R. 158, at p. 161, as follows:—

"Firstly they must be negative covenants. No affirmative covenant requiring the expenditure of money, or the doing of some act, can ever be made to run with the land. Secondly, the covenant must be one that touches or concerns the land, by which is meant that it must be imposed for the benefit, or to enhance the value, of the land retained by the vendor, or some part of it, and no such covenant can ever be imposed if the sale comprises the whole of the vendor's land. Further, the land retained by the vendor must be such as to be capable of being benefited by the covenant at the time when it is imposed. Thirdly, the land which is intended to be so benefited must be so defined as to be easily ascertainable, and the fact that the covenant is imposed for the benefit of that particular land should be stated in the conveyance and the person or the class of persons entitled to enforce it should also be so stated. The fact that the benefit of the covenant is not intended to pass to all persons into whose hands the unsold land may come is not objectionable, so long as the class of persons intended to have the benefit of the covenants is clearly defined. Finally, it must be remembered that those covenants can only be enforced so long as the covenantee or his successor in title retains some part of the land for the benefit of which the covenant was imposed."

As to restrictive covenants generally, see 29 Halsbury's Laws (2nd Edn.) 441 and *Cheshire's Modern Law of Real Property* (5th Edn.), at pp. 301 *et seq.*

*Forestry Act, 1919, s. 3.*—3 Halsbury's Statutes 446. "Timber" is defined in that section as including all forest products.

*Law of Property Act, 1925, ss. 79, 84.*—15 Halsbury's Statutes 257, 260. S. 79 provides that "a covenant . . . be deemed to be made by the covenantor on behalf of himself his successors in title and the persons deriving title. . . ." The insertion of the word "or" between "himself" and "his" in the last sentence of sub-s. (1), *ante*, which summarises s. 79 is, presumably, an error. S. 84 empowers one or more of the Official Arbitrators appointed for the purposes of the Acquisition of Land (Assessment of Compensation) Act, 1919 (2 Halsbury's Statutes 1176), to discharge or modify a restrictive covenant where by reason of changes in the character of the property or of the neighbourhood or other material circumstances the covenant ought to be deemed obsolete or where its continued existence would impede the reasonable user of land for public or private purposes without securing practical benefits to other persons. As to restrictive covenants generally, see note to sub-s. (2), *supra*.

**2. Power of tenants for life, etc., to enter into forestry dedication covenants.**—(1) A tenant for life may enter into a forestry dedication covenant relating to the settled land or any part thereof either for consideration or gratuitously, and—

- (a) this subsection shall be construed as one with the Settled Land Act, 1925;
- (b) that Act, and section twenty-eight of the Law of Property Act, 1925 (which confers the powers of a tenant for life on trustees for sale), shall apply as if the power conferred by this subsection had been conferred by that Act; and
- (c) for the purposes of section seventy-two of that Act (which relates to the mode of giving effect to a disposition by a tenant for life and to the operation thereof) and of any other relevant statutory provision, entering into a forestry dedication covenant shall be treated as a disposition. [1143]

(2) A university or college to which the Universities and College Estates Act, 1925, applies may enter into a forestry dedication covenant relating to any land belonging to it either for consideration or gratuitously, and that Act shall apply as if the power conferred by this subsection had been conferred by that Act. [1144]

(3) Where land is glebe land or other land belonging to an ecclesiastical benefice, the incumbent of the benefice, and, where land is part of the endowment of any other ecclesiastical corporation, the ecclesiastical corporation, may with the consent of the Ecclesiastical Commissioners enter into a forestry dedication covenant relating to the land either for consideration or gratuitously, and the Ecclesiastical Leasing Acts shall apply as if the power conferred

by this subsection had been conferred by those Acts, except that the consent of the patron of an ecclesiastical benefice shall not be requisite. [1145]

(4) This section shall not extend to Scotland. [1146]

*Effect of section.*—This section empowers certain classes of persons having only limited powers of disposal of land to enter into forestry dedication covenants.

*Forestry dedication covenant.*—For definition of this expression, see s. 1 (1), *ante*.

*Settled Land Act, 1925.*—17 Halsbury's Statutes 833. For s. 72 thereof, see 17 Halsbury's Statutes 904.

*Law of Property Act, 1925, s. 28.*—15 Halsbury's Statutes 203.

*Universities and College Estates Act, 1925.*—7 Halsbury's Statutes 87. By s. 1 of that Act the universities and colleges to which the Act applies are the Universities of Oxford, Cambridge and Durham, and the colleges or halls in those universities and the Colleges of Saint Mary of Winchester, near Winchester, and of King Henry the Sixth at Eton, and for the purposes of that Act the Cathedral or House of Christ Church in Oxford is to be considered a college in the University of Oxford. The Act of 1925 confers on the universities and colleges mentioned powers of dealing with land in many respects similar to those conferred on a tenant for life by the Settled Land Act, 1925.

*Glebe land.*—This expression is defined by the Glebe Lands Act, 1888, s. 12 (6 Halsbury's Statutes 910), as including any manor, land or tenement forming the endowment or part of the endowment of a benefice.

*Ecclesiastical Leasing Acts.*—These are the Ecclesiastical Leasing Acts of 1842 and 1858 (6 Halsbury's Statutes 833, 875); see s. 13 of the Act of 1858 (6 Halsbury's Statutes 880). They have been extended by the Cathedral (Houses of Residence) Measure, 1936, s. 2 (i) (29 Halsbury's Statutes 105), and extended and modified by the Ecclesiastical Commissioners (Powers) Measure, 1936, ss. 4–8 (29 Halsbury's Statutes 110–112).

*Consent of the patron of an ecclesiastical benefice.*—S. 20 of the Ecclesiastical Leasing Act, 1842 (6 Halsbury's Statutes 843) provides that leases and grants made under that Act, which by s. 12 of the Act of 1858 (6 Halsbury's Statutes 880) is to be construed with the latter Act, are to be made with the consent of the Ecclesiastical Commissioners and with such further consents as are mentioned in the said s. 20. These further consents are, in the case of a lease or grant by an incumbent of a benefice, the consent of the patron, and in the case of certain leases or grants of copyhold land, the consent of the lord of the manor. With the enfranchisement of copyholds, however, by the Law of Property Act, 1922, s. 128 (3 Halsbury's Statutes 633), the consent of the lord of the manor became no longer necessary (see Sched. XII to the Act of 1922). Sub-s. (3), *ante*, which empowers ecclesiastical corporations to enter into forestry dedication covenants as if they were so empowered by the Ecclesiastical Leasing Acts, retains the requirement that the consent of the Ecclesiastical Commissioners shall be given thereto, but expressly provides that the consent of the patron of a benefice shall not be required.

*Ecclesiastical Commissioners.*—On April 1, 1948, the day appointed by the Archbishop of Canterbury, the Ecclesiastical Commissioners were dissolved, and their functions, rights and privileges transferred to the Church Commissioners for England established under the Church Commissioners Measure, 1947 (see s. 2 thereof).

### *Forestry dedication agreements (Scotland)*

#### 3–4. Application to Scotland. [1147]

#### *Miscellaneous, short title, etc.*

5. *Restriction on compulsory acquisition of dedicated land.*—(1) Nothing in section four of the Forestry Act, 1945, shall authorise the compulsory acquisition of any land as to which a forestry dedication covenant or agreement is in force and which is being used and managed in accordance with the provisions and conditions of a plan of operations approved by the Commissioners. [1148]

(2) Any question arising under this section whether there has been a breach of any of the provisions and conditions of a plan of operations shall be referred to the determination of an arbitrator appointed by the President for the time being of the Royal Institution of Chartered Surveyors, and such a breach shall not be treated as having occurred by virtue of any act or omission capable of remedy unless there has been default in remedying it within a reasonable time after notice given by the Commissioners requiring the remedy thereof. [1149]

(3) In the application of this section to Scotland there shall be substituted, for the reference to an arbitrator appointed by the President of the Royal Institution of Chartered Surveyors, a reference to an arbiter appointed by the Chairman of the Scottish Committee of the said Institution. [1150]

*Forestry Act, 1945, s. 4.*—38 Halsbury's Statutes 18. This section empowers the Minister of Agriculture and Fisheries to purchase, either by agreement or compulsorily, any land in England or Wales which is in the Minister's opinion suitable for afforestation or for purposes

connected with forestry or which must necessarily be acquired together with any such land. This power of compulsory acquisition has never been exercised. All the land transferred to the Minister, which, together with land in Scotland transferred to the Secretary of State concerned with agriculture in Scotland, amounts to some 1,250,000 acres, was acquired by agreement with the owners thereof. The power of compulsory acquisition is, however, available for exercise in appropriate cases. The Minister of Agriculture and Fisheries stated on the Second Reading of the Bill in the House of Commons that the power would be exercised only in cases where an owner who was unwilling to enter into a forestry dedication covenant permitted his land to grow nothing and to run riot (433 H. of C. Official Report 1209).

*Forestry dedication covenant.*—For definition of this expression, see s. 1 (1), *ante*.

*Forestry dedication agreement.*—This is the expression which in relation to Scotland corresponds to the expression forestry dedication covenant, which relates only to England and Wales.

*Plan of operations.*—The Forestry Commissioners in para. 8 of their Supplementary Report on Post-War Forest Policy (Cmd. 6500), which was accepted by the Government, proposed that the act of dedication should include an undertaking by the owner to work to a plan approved by the Forest Authority, which would lay down the main operations to be undertaken. See, further, the Preliminary Note, *ante*.

*Notice given by the Commissioners.*—Compare with this provision the notice required to be given by a lessor under s. 146 (1) of the Law of Property Act, 1925 (15 Halsbury's Statutes 325), before he can enforce a right of re-entry or forfeiture for breach of any covenant or condition in a lease. See also cases decided under that subsection at 31 Digest 483.

**6. Deduction of grants from compensation in case of compulsory acquisition.**—If the power of compulsory purchase conferred by subsection (2) of section four of the Forestry Act, 1945, falls to be exercised in relation to land in respect of which advances by way of grant have been made by the Commissioners after the passing of this Act or within two years before the passing thereof, the advances, other than any made more than thirty years before the date of service of notice to treat in exercise of that power, shall become repayable by the person entitled to the compensation for the compulsory purchase, together with compound interest on each advance repayable, calculated from the date of the making thereof to the date on which the compensation is paid at the rate of three pounds per cent. per annum with yearly rests, and shall be recoverable by deduction from the compensation and not otherwise ;

Provided that, in the case of compensation for the compulsory purchase of one of several interests in such land, the amount repayable shall be a part only of the advances and interest proportionate to the value of the purchased interest as compared with the value of the land. [1151]

*Effect of section.*—See Preliminary Note, *ante*.

*Forestry Act, 1945, s. 4 (2).*—38 Halsbury's Statutes 18. See note to s. 5, *ante*.

*Advances by way of grant.*—By the Forestry Act, 1919, s. 3 (3) (d) (3 Halsbury's Statutes 445), as amended by the Forestry Act, 1945, s. 10 and Sched. II (38 Halsbury's Statutes 22, 24), the Forestry Commissioners are empowered to make advances by way of grant or by way of loan to persons in respect of the afforestation (including the re-planting) of land belonging to those persons. In exercising this power the Commissioners are to comply with any directions given to them by the appropriate Minister (see s. 2 of the Act of 1945). As to the advances which may be made in connection with the scheme for the dedication of woodlands to timber production, see Preliminary Note, *ante*.

*Interest at 3 per cent. per annum.*—The rate of interest on advances repayable under this section is the same as the rate of interest on loans which may be made to owners of land entering into forestry dedication covenants.

## **7. Execution of certain instruments on behalf of Secretary of State. [1152]**

*General note.*—This section applies to Scotland.

**8. Short title, construction, citation, and extent.**—(1) This Act may be cited as the Forestry Act, 1947, and shall be construed as one with the Forestry Acts, 1919 to 1945, and this Act and those Acts may be cited together as the Forestry Acts, 1919 to 1947. [1153]

(2) This Act shall not extend to Northern Ireland. [1154]

*Forestry Acts, 1919 to 1945.*—These Acts are the Forestry Act, 1919 (3 Halsbury's Statutes 443), the Forestry (Transfer of Woods) Act, 1923 (3 Halsbury's Statutes 459), the Forestry Act, 1927 (8 Halsbury's Statutes 464) and the Forestry Act, 1945 (38 Halsbury's Statutes 16).

*Construed as one.*—Accordingly, this Act must be construed as if it were contained in the Forestry Acts, 1919 to 1945 (see *supra*), unless there is in this Act some manifest discrepancy, which shows that it has modified something to be found in the earlier Acts; see *Canada Southern Rly. Co. v. International Bridge Co.* (1883), 8 App. Cas. 723, at p. 727 ; 42 Digest 664, 745 ; *Hart v. Hudson Brothers, Ltd.*, [1928] 2 K. B. 629, at p. 634 ; *Phillips v. Parnaby*, [1934] 2 K. B. 299, at p. 302 ; Digest Supp. Thus, words defined in the earlier Acts will bear the like meaning in this Act, unless it is clear from the context that their construction in this Act is to be different.



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## ORDERS, CIRCULARS AND MEMORANDA

## POLICE AND FIREMEN (WAR SERVICE) ACTS (END OF EMERGENCY) ORDER, 1947

S. R. &amp; O., 1947, No. 152

January 29, 1947

Whereas certain provisions of the Police and Firemen (War Service) Acts, 1939 and 1944, are limited in their effect by reference to the "period of the present emergency," and that expression is defined by section fourteen of the Act of 1939 as the period beginning with the first day of September, nineteen hundred and thirty-nine, and ending with such day as His Majesty may by Order in Council declare to be the date on which the emergency that was the occasion of the passing of that Act came to an end :

Now, therefore, His Majesty in pursuance of the said section is pleased, by and with the advice of His Privy Council to order, and it is hereby ordered, as follows :—

1. This Order may be cited as the Police and Firemen (War Service) Acts (End of Emergency) Order, 1947. [1155]

2. It is hereby declared that the thirty-first day of December, nineteen hundred and forty-six, is the date on which the emergency that was the occasion of the passing of the Police and Firemen (War Service) Act, 1939, came to an end. [1156]



## POLICE AMALGAMATION (SURREY) ORDER, 1947

*S. R. & O., 1947, No. 539**March 26, 1947*

In pursuance of the powers conferred upon me by subsection (3) of section thirteen of the Police Act, 1946, I [*i.e.* the Secretary of State] hereby order as follows :—

1. The Police Amalgamation (Surrey) Order, 1943, is hereby revoked. [1157]

2. All members of the joint force established by the said Order shall be transferred to the Surrey county police force. [1158]

3. Joseph Simpson, Esq., O.B.E., shall be the chief constable of Surrey. [1159]

4. Notwithstanding the revocation of the said Order any payments or credits under the Schedule to the said Order which if the said Order had continued to be in force would have been due in respect of the period during which it was in force shall continue to be due and shall be paid as soon as possible after the amounts have been ascertained. [1160]

5.—(1) This Order may be cited as the Police Amalgamation (Surrey) Order, 1947.

(2) This Order shall come into force immediately before the first day of April, 1947. [1161]

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## POLICE AMALGAMATION (WILTS) ORDER, 1947

*S. R. & O., 1947, No. 540**March 26, 1947*

In pursuance of the powers conferred upon me by subsection (3) of section thirteen of the Police Act, 1946, I [*i.e.* the Secretary of State] hereby order as follows :—

1. The Police Amalgamation (Wilts) Order, 1943, and the Police Amalgamation (Wilts) Order, 1945, are hereby revoked. [1162].

2. All members of the joint force established by the Police Amalgamation (Wilts) Order, 1943, shall be transferred to the Wilts county police force. [1163]

3. Lieutenant-Colonel Harold Arthur Golden, O.B.E., shall be the chief constable of Wilts. [1164]

4. Notwithstanding the revocation of the said Orders any payments or credits under the Schedule to the Police Amalgamation (Wilts) Order, 1943, which if the said Order had continued to be in force would have been due in respect of the period during which it was in force shall continue to be due and shall be paid as soon as possible after the amounts have been ascertained. [1165]

5.—(1) This Order may be cited as the Police Amalgamation (Wilts) Order, 1947.

(2) This Order shall come into force immediately before the first day of April, 1947. [1166]

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**POLICE AMALGAMATION (CORNWALL) ORDER, 1947***S. R. & O., 1947, No. 554**March 28, 1947*

In pursuance of the powers conferred upon me by subsection (3) of section thirteen of the Police Act, 1946, I [*i.e.* the Secretary of State] hereby order as follows :—

1. The Police Amalgamation (Cornwall) Order, 1943, is hereby revoked. [1167]

2. Notwithstanding the revocation of the said Order any payments or credits under the Schedule to the said Order which if the said Order had continued to be in force would have been due in respect of the period during which it was in force shall continue to be due, and shall be paid as soon as possible after the amounts have been ascertained. [1168]

3.—(1) This Order may be cited as the Police Amalgamation (Cornwall) Order, 1947.

(2) This Order shall come into force immediately before the first day of April, 1947. [1169]

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**POLICE AMALGAMATION (KENT) ORDER, 1947***S. R. & O., 1947, No. 555**March 28, 1947*

In pursuance of the powers conferred upon me by subsection (3) of section thirteen of the Police Act, 1946, I [*i.e.* the Secretary of State] hereby order as follows :—

1. The Police Amalgamation (Kent) Order, 1943, is hereby revoked. [1170]

2. Notwithstanding the revocation of the said Order any payments or credits under the First Schedule to the said Order which if the said Order had continued to be in force would have been due in respect of the period during which it was in force shall continue to be due, and shall be paid as soon as possible after the amounts have been ascertained. [1171]

3.—(1) This Order may be cited as the Police Amalgamation (Kent) Order, 1947.

(2) This Order shall come into force immediately before the first day of April, 1947. [1172]

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**POLICE AMALGAMATION (SUSSEX) ORDER, 1947***S. R. & O., 1947, No. 566**March 28, 1947*

In pursuance of the powers conferred upon me by subsection (3) of section thirteen of the Police Act, 1946, I [*i.e.* the Secretary of State] hereby order as follows :—

1. The Police Amalgamation (Sussex) Order, 1943 (hereafter in this Order referred to as the "principal Order"), the Police Amalgamation (Sussex)

Order, 1944, and the Police Amalgamation (Sussex) Order, 1946, which Orders are hereafter in this Order referred to together as the "Amalgamation Orders," are hereby revoked. [1173]

2.—(1) Every member of the Sussex police force who—

- (a) was transferred by the principal Order to that force from a continuing force and is not named in the First Schedule hereto is hereby transferred to the continuing force from which he was transferred by the principal Order ;
- (b) was transferred by the principal Order to that force from the Hove borough police force and is not named in the First Schedule hereto is hereby transferred to the East Sussex county police ;
- (c) is named in any of the first five Parts of the First Schedule hereto is hereby transferred to the force named at the head of that Part of the said Schedule in which the member is named.

(2) Reginald Breffit, Esquire, is hereby appointed chief constable of East Sussex ; Ronald Paterson Wilson, Esquire, is hereby appointed chief constable of West Sussex ; Captain William James Hutchinson is hereby appointed chief constable of the Brighton borough police force ; Lieutenant-Colonel Angus Gordon Cargill, B.E.M., is hereby appointed chief constable of the Hastings borough police force.

(3) In relation to each of the persons named in the first column of Part VI of the First Schedule hereto (who are persons who have engaged in accordance with the provisions of section 2 of the Police (Overseas Service) Act, 1945, for a period of overseas service) the police area set opposite to his name in the second column of the said Part of the said Schedule is the police area prescribed by this Order for the purposes of sub-paragraph (b) of paragraph 10 of the Third Schedule to the Police Act, 1946. [1174]

3.—(1) Where any grant under the Police Pensions Act, 1921, was made before the principal Order came into force—

- (a) in respect of a member of the Hove borough police force, any payments in respect of that grant due after this Order comes into force and any further grants under the said Act in respect of that man shall be payable and made as if that man had been a member of the East Sussex county police ;
- (b) in any other case, any payments in respect of that grant due after this Order comes into force and any further grants under the said Act in respect of the constable in question shall be payable and made as if the Amalgamation Orders had not been made.

(2) Where any grant under the Police Pensions Act, 1921, has been made by the Sussex police authority :—

- (a) in respect of a member of the Sussex police force who was transferred thereto from the Hove borough police force, any payments in respect of that grant due after this Order comes into force and any further grants under the said Act in respect of that man shall be payable and made as if that man had been a member of the East Sussex county police ;
- (b) in any other case, any payments in respect of that grant due after this Order comes into force and any further grants under the said Act in respect of the constable in question shall be payable and made by the police authority of the continuing force from which he was transferred to the Sussex police force by the principal Order. [1175]

4. Each officer of the Sussex police authority who is not named in the Second Schedule hereto is hereby transferred to and becomes an officer of the council of the county or, as the case may be, county borough in which

he is stationed immediately before this Order comes into force and shall hold office by the same tenure and on the same conditions as immediately before this Order comes into force and, while performing similar duties shall, in respect thereof, receive no less salary or remuneration than the salary or remuneration to which he would have been entitled if he had not been transferred. [1176]

5.—(1) Any interest in land of the Sussex police authority is hereby transferred to that contributing authority in the area of which the land in question is situate to be held for police purposes.

For the more convenient registration of title to land hereby transferred either to the mayor, aldermen and burgesses of the county borough of Eastbourne or to the West Sussex county council the numbers of the titles to the said land are set out in Parts I and II of the Third Schedule hereto.

(2) Any contract to which the Sussex police authority is a party for the construction, improvement or repair of any building or other works shall be of full force and effect in favour of and against the council having an interest in the land on which the building or other works are situate.

(3) The contract described in Part III of the Third Schedule hereto shall be of full force and effect in favour of and against the West Sussex county council.

(4) The Compulsory Purchase Order described in Part IV of the Third Schedule hereto shall be of full force and effect in favour of and against the East Sussex county council and all proceedings in respect of and under the said Order may be carried on as if it had been made by the said county council and as if at the time it was made, East Sussex had been a separate police area. [1177]

6.—(1) Any vehicles belonging to the Sussex police authority are hereby transferred to that one of the contributing authorities in the area of which the vehicle is stationed at the time when this Order comes into force to be held by that contributing authority for police purposes.

(2) Any wireless equipment belonging to the Sussex police authority is hereby transferred to that one of the contributing authorities in the area of which the wireless equipment is placed when this Order comes into force to be held by that contributing authority for police purposes.

(3) Any consumable stores belonging to the Sussex police authority are hereby transferred to that one of the contributing authorities in the area of which they are placed when this Order comes into force to be held by that contributing authority for police purposes. [1178]

7.—(1) No action or cause of action which immediately before this Order comes into force is pending or existing by or against the Sussex police authority shall be prejudicially affected by reason of this Order.

(2) Any such action may be carried on by or against and any such cause of action shall survive for the benefit of or against—

(a) in the case of an action or cause of action arising out of an interest in land transferred by Article 5 or a contract the benefit of which is so transferred or the Compulsory Purchase Order the benefit of which is so transferred, the council to which it is so transferred, and

(b) in the case of any other action or cause of action, the East Sussex county council.

(3) All such actions may be amended in such manner as may be necessary or proper in consequence of this Order.

(4) In this Article "action" includes all proceedings of whatever nature in or before any court or other tribunal. [1179]

8. All property, rights and liabilities of the Sussex police authority other than those referred to above are hereby transferred to the East Sussex county council. [1180]

9.—(1) The East Sussex county council shall maintain and administer a fund to be known as the Sussex police liquidation fund (hereafter in this Order referred to as the "liquidation fund") which shall be subject to audit by a district auditor.

(2) The East Sussex county council may for the purpose of administering the liquidation fund make arrangements with any contributing authority for the use by the said county council of the services of officers of the contributing authority and the making of contracts and payments on behalf of the said county council by the contributing authority.

(3) Notwithstanding the revocation of the principal Order any payments or credits under the Second Schedule to the said Order which would have been due in respect of each financial year during the period for which the said Order was in force shall continue to be due but shall be payable or credited to or out of the liquidation fund instead of to or out of the Sussex police fund as soon as may be after the amounts have been ascertained.

(4) Each contributing authority shall make or receive into or out of the liquidation fund the payments described in the Fourth Schedule hereto.

(5) The East Sussex county council shall pay into the liquidation fund all money coming into their possession under Article 7 (2) (b) or 8 and shall dispose of all property and rights other than money so coming into their possession unless the contributing authorities otherwise agree, in such manner as may best realise their full value and shall pay the proceeds thereof into the liquidation fund.

(6) The East Sussex county council shall, out of the liquidation fund, pay all the expenses of the maintenance and administration of that fund and satisfy all liabilities transferred to them by Article 7 (2) (b) or 8 and all expenditure of whatever nature incurred by them in relation to such liabilities.

(7) The East Sussex county council shall, after making the payments thereout prescribed by the preceding paragraph, distribute the residue of the liquidation fund to the contributing authorities in the proportions, unless the contributing authorities otherwise agree, set out in the Table subjoined to sub-paragraph (1) of paragraph 5 of the Second Schedule to the principal Order. [1181]

10.—(1) In this Order the following expressions have the meanings hereby respectively assigned to them, that is to say:—

"continuing force" means each of the following, namely:—the East Sussex county constabulary, the West Sussex county constabulary, the Brighton borough police force, the Eastbourne borough police force and the Hastings borough police force;

"contributing authority" has the same meaning as in the principal Order;

"grant" means any pension, allowance or gratuity;

"officer" includes a servant.

(2) The Interpretation Act, 1889, applies to the interpretation of this Order as it applies to the interpretation of an Act of Parliament. [1182]

11.—(1) This Order may be cited as the Police Amalgamation (Sussex) Order, 1947.

(2) This Order shall come into force immediately before the first day of April, 1947. [1183]

## FIRST SCHEDULE

## PART I

*Members of Sussex police force transferred to East Sussex Constabulary*

BALL, Horace.  
 BARTHORPE, Desmond George.  
 BARTON, Alfred Edward.  
 BONDY, Charles Henry.  
 BRAMLEY, Arthur George.  
 BROWN, John Warilda Francis.  
 BURTENSHAW, Frederick Dunstone.  
 BUTCHER, Horace Alfred Charles.  
 BUTLER, Eric William.  
 CLARK, Charles James.  
 COLEBY, George Ernest.  
 COLLINS, Albert Henry.  
 DAVIES, Ivor Arthur.  
 DENYER, John Henry.  
 EDGELEER, William.  
 ELLIOTT, Howard Francis.  
 EMERY, William Stanley Howard.  
 EVANS, Donald Henry William.  
 EVANS, Peter John.  
 FINCHAM, Ronald William.  
 FRANKS, Donald Frederick.  
 FRENCH, Thomas William.  
 GARNER, Sam.  
 GRAY, Andrew Victor.  
 GROSE, Ernest Jackson.  
 HAILEY, William Alfred Richardson.  
 HARRIOTT, Douglas Richard.  
 HARVEY, Henry John.  
 HERMITAGE, Norman Boswell.  
 HIGHWOOD, Peter Aubrey.

HORTON, Bessie Frances.  
 HUTCHINGS, Bertram Percy William.  
 JOHNSON, John Stuart.  
 JOHNSTONE, Charles Frederick.  
 KENSETT, Philip.  
 KITCHEN, John Charles William.  
 LEE, Geoffrey.  
 LEVETT, Anthony Barrymore.  
 MAJOR, David Patrick.  
 MUNN, Cecil Thomas Fowle.  
 PASSMORE, Harold William John.  
 PLATER, Douglas Eric.  
 POTTER, Cecil Eric.  
 PULLEN, Peter Cecil.  
 RONALD, David Munro.  
 SEWARD, Dennis Robert.  
 SHEPHERD, Stanley Walter.  
 SHERWOOD, Arthur.  
 SHORT, John William.  
 SMITH, Alfred Clifford.  
 SPAIN, Frank Henry.  
 STEVENSON, Henry William Bradford.  
 STONE, William John.  
 TOWSE, Alfred Burley.  
 TREADAWAY, George William Victor.  
 TURNER, Hubert Archibald.  
 WATTS, Leslie William.  
 WELFARE, Maurice Bernard.  
 WORRALL, Charles Hedley.

[1184]

## PART II

*Members of Sussex police force transferred to West Sussex Constabulary*

ATKINS, James Thomas.  
 BAKER, Pamela Margaret.  
 BARNARD, Ronald George.  
 BASHFORD, Augustus Ernest.  
 BISHOP, Leonard John.  
 CLARK, Jack Howard Lewis.  
 CUDMORE, Arthur Denis.  
 DYER, Albert Jack.  
 FAIR, William George.  
 FARNHAM, Frederick James.  
 GAPE, Harry Frederick.  
 GRAHAM, Arthur Edward James.  
 GREENSHIELDS, Archibald.  
 HAMMOND, Bernard Robert Reid.  
 HARRIS, John Wakeley.  
 HEWES, Leonard Thomas.  
 JACKMAN, Joseph.  
 JAMES, Samuel Thomas.  
 LARGE, Douglas Albert.  
 LITTLER, Ronald.  
 LONG, William Hanslip.  
 MACDONALD, Alexander George.

MATTHEWS, George Frederick Arthur.  
 MAYNARD, Jack William.  
 NICHOLLS, Armistice Myrtle.  
 PAFFORD, Ronald James.  
 PEEL, Desmond Bishop.  
 PIERRE, Harry Alexandre.  
 POST, Edward Henry.  
 PRITCHARD, Philip.  
 RINGROSE, George Francis.  
 ROLAND, Joseph Brian.  
 SCARFE, Charles George.  
 SECCOMBE, Norman Denis.  
 SHANNON, Wilfred.  
 SIMPSON, Kenneth William.  
 SMITH, Richard James.  
 STEER, Arthur George.  
 STOTHARD, Eric William Robert.  
 TAPP, Charles Frederick.  
 TAYLOR, William James.  
 THOMPSON, Frederick.  
 WALLS, William Walter.  
 WILLIAMS, Ronald George.

[1185]

## PART III

*Members of Sussex police force transferred to Brighton police force*

BARNARD, Albert Frederick Charles.	HOWARD, George.
BEVAN, David William.	HUNT, Alfred Silas.
BINGHAM, John Henry.	JOHNSON, Robert, Arthur.
BOOTHROYD, Paul Anthony Francis.	KERRY, Harold Frederick Nico.
BOXALL, Ernest John.	LEACH, Lionel.
BRAY, John Frank.	MANN, Kenneth Stanley.
BURGESS, Robert Leonard.	MILES, Raymond Charles.
BUTLER, Daisy May.	MILSON, Charles Henry.
CAMPBELL, Kenneth Don.	MITCHELL, Donald.
CLARK, Huntley Francis.	PETTIT, Reginald Frank.
COBBY, Edward James.	PULLEN, Dennis Harry.
DEACON, Frederick Irving.	RATCLIFFE, Ernest.
FEAST, Herbert James.	RUMMERY, Harold Keith.
FERRIER, Harry Alfred.	SOLE, John James.
FISKE, Bernard Henry.	STEVENS, Albert Barker.
FOX, Leslie William.	STOREY, Roy.
FROST, Percy David Alford.	SULLIVAN, Terence Michael.
GRANT, Jack Charles.	TINCKNELL, Alexander Ralph.
HARRISON, John Henry.	TULLETT, Vernon James Herbert.
HERRINGTON, Edward Victor.	WALKER, Peter Henry.
HIDER, Florence Mary.	WATTS, Thomas Percy.
HINES, Arthur Edward.	WOODJETTS, Desmond Harry.
HOPPS, Alfred.	YOUNG, Robert William.

[1186]

## PART IV

*Members of Sussex police force transferred to Eastbourne police force*

AUKETT, Edward Robert.	MEPHAM, Jack.
BALDY, David George.	OSMAN, John Shellard.
BURNAGE, Allan John.	PETTIT, Jack.
COLES, Geoffrey Lance.	PILCHER, John.
CREASEY, James Laughton.	PITMAN, Leslie James.
CUMMINGS, John.	PLATER, JACK FOURT.
FORD, Philip Wilfred.	POOLE, Frank Valentine.
GERTY, Richard Gilbert.	ROBINS, Stanley Frank.
HANEY, Frank.	ROBINSON, Arthur Francis.
HARRIOTT, Thomas.	SUTTON, Francis George Seymour.
HUMPHREY, Lawson.	TAYLOR, Raymond.
JEFFREY, Clarence Arthur William Austin	THOMAS, Arthur Trevor.
LINYARD, Bessie.	WILLIAMS, John Stanley.
MCGREGOR, Ronald Alexander.	VAUGHAN, Anthony Montague.

[1187]

## PART V

*Members of Sussex police force transferred to Hastings police force*

BAXTER, Alan Henden.	MURDOCH, John McKenzie.
BUDDLE, Reginald Kenneth.	PARKER, Ernest Charles.
CHAPMAN, Lawrence Charles.	PERKS, Frank.
COWAN, David Naldreth.	RUSSELL, Stanley Robert.
CURSTONS, John William Dewdney.	SOMERS, Kevin.
DADSON, Ronald Cecil.	SPICER, Albert.
GATFORD, John Norman.	STEEDMAN, Reginald Frank.
GRAY, Mervyn John.	TAPLIN, Edward Harry.
HEASMAN, Jack.	TINSON, Bernard Albert.
HUNT, Benjamin Reginald.	TUCKNOTT, Ethel Vera.
JOHNSON, Leonard William.	WALE, Walter George.
JOPSON, William.	WALKER, Peter Roland.
KING, John.	WENHAM, Edward James.
LAVENDER, William Reginald.	WHITE, John Chester.
MAGGS, Charles.	WINCH, Kenneth Francis.
MARRIOTT, Thomas George.	WYATT, Arthur Joseph.

[1188]



## PART VI

*Members of the Sussex police force to whom the Police (Overseas Service) Act applies*

BAILEY, James Edward	.. ..	East Sussex.	
BARKER, Arthur William	.. ..	West Sussex.	
FIELD, Walter Robert	.. ..	East Sussex.	
PARRY, William Hugh Lionel	.. ..	Brighton Borough.	
ROUSE, James Stanley	.. ..	East Sussex.	
LOCK, Leslie George	.. ..	Brighton Borough.	
HUTCHINSON, Leslie Edward	.. ..	Brighton Borough.	
HOLLANDS, Leslie Dennis Charles	.. ..	Brighton Borough.	
SMITH, Vernon Henry	.. ..	Brighton Borough.	
TAPPER, Richard Godfrey	.. ..	West Sussex.	[1189]

## SECOND SCHEDULE

*Officers of Sussex police authority not transferred* [1190]

Miss Valerie BAKER.  
 Mrs. Gwendoline HILL.  
 Miss Florence HUTSON-POPE.  
 Miss Lorraine Virginia Rachael Lobb.  
 Mrs. Sybil MAGGS.  
 Miss Hazel MANTON.  
 Miss Joan TRIGG.  
 Mrs. Julia WARNES.

## THIRD SCHEDULE

*Transfer of interests relating to land*

## PART I

*Registered title numbers of land transferred to Eastbourne borough council*

223, Seaside, Eastbourne	.. ..	Title No. E.B. 2458
102, Victoria Drive, Eastbourne	.. ..	Title No. E.B. 10564
52, Ceylon Place, Eastbourne	.. ..	Title No. E.B. 10952

[1191]

## PART II

*Registered title numbers of land transferred to West Sussex county council*

40, Henry Avenue, Rustington	.. ..	Title No. SX.706.
Site adjoining George V. Avenue, Worthing, being Part of O.P. No. 182, Parish of Worthing, Sussex (West) Sheet LXIV (10) 1912 Edition. Not yet registered under separate title number.		Part of Title No. P.58642.

[1192]

## PART III

Contract between the Countryside Trust Limited and Sussex police authority for sale of land containing 0.3 of an acre or thereabouts having a frontage of sixty feet to the Hammer-Camelsdale Road, Linchmere, being part of O.P. No. 102, Sheet X (4) Sussex (West) Revised Edition 1938. [1193]

## PART IV

*Outstanding Compulsory Purchase Order*

The Sussex Police Authority (Sutton Road, Seaford) Compulsory Purchase Order, 1946, made the 7th November, 1946, in respect of approximately 3,076 square yards of grassland forming part of O.P. No. 43 Sussex (East) Sheet No. LXXIX (9) (1927 Edition) having a frontage to Sutton Road, Seaford, and Middle Furlong, Seaford. [1194]

## FOURTH SCHEDULE

*Payments by or to contributing authorities into or out of the Sussex police liquidation fund*

1. The contributing authority to which an interest in land is transferred by paragraph (1) of Article 5 shall pay into the liquidation fund—

- (a) in the case of any such interest in respect of the acquisition of which the county treasurer for East Sussex certifies in writing that the expenditure on such acquisition has not formed, nor will form, the subject of a claim for government grant to be payable to the Sussex police fund or to the liquidation fund, a sum equal to the expenditure out of the Sussex police fund in respect of such acquisition ;
- (b) in any other case a sum equal to the cost of such acquisition less any government grant receivable in respect of such cost.

2. The contributing authority which has, or under this Order acquires, any interest in land to which any capital improvement approved by the Sussex police authority as a separate transaction has been made at a cost to the Sussex police fund of more than fifty pounds shall pay into the liquidation fund a sum equal to the said cost less any government grant receivable in respect of such cost :

Provided that where the county treasurer for East Sussex certifies in writing that such cost has not formed, nor will form, the subject of a claim for government grant to be payable to the Sussex police fund or to the liquidation fund the contributing authority shall pay into the liquidation fund a sum equal to the said cost.

3. The contributing authority to which any vehicle or wireless equipment is transferred by Article 6 shall pay into the liquidation fund a sum equal to the cost of the acquisition of the vehicle or wireless equipment by the Sussex police authority less any government grant receivable in respect of such cost.

4. The contributing authority which owned any vehicle sold by the Sussex police authority shall be paid out of the liquidation fund a sum equal to the proceeds of such sale less any part of the said proceeds applicable to the repayment of government grant. [1195]

## HAMPSHIRE POLICE (AMALGAMATION) ORDER, 1947

*S. R. & O., 1947, No. 567*

*March 28, 1947*

Whereas the police authorities for the following police areas, namely, the county of Southampton and the county of the Isle of Wight, have submitted to me a Scheme for the amalgamation of the said Police areas :

Now, therefore, in pursuance of the powers conferred upon me by subsection (1) of section 3 of the Police Act, 1946, I [*i.e.* the Secretary of State], by this Order, approve the said Scheme which is set out in the Schedule hereto.

This Order may be cited as the Hampshire Police (Amalgamation) Order, 1947. [1196]

\* \* \* \* \*

## SCHEDULE

## THE HAMPSHIRE POLICE (AMALGAMATION) SCHEME, 1947

1. At the following time (hereafter in this Scheme referred to as the "time of transfer"), namely, immediately before the first day of April, 1947, the police areas consisting of the counties of Southampton (which includes the county borough of Bournemouth) and the Isle of Wight shall be amalgamated for police purposes and become one combined police area which shall be called the Hampshire police area.

2.—(1) At the time of transfer there shall be established for the Hampshire police area a combined police force which shall be called the Hampshire constabulary.

(2) All members of the Hampshire joint police force (being the force established under the Police Amalgamation (Hampshire) Order, 1948) shall at the time of transfer be transferred to the Hampshire constabulary.

(3) Richard Dawnay Lemon, Esquire, who is chief constable of the Hampshire joint police force, is hereby appointed first chief constable of the Hampshire constabulary.

3.—(1) The Hampshire constabulary shall be maintained by a combined police authority which shall be called the Hampshire police authority.

(2) The Hampshire police authority shall be constituted in accordance with the provisions of the First Schedule hereto.

(3) At the time of transfer the police functions of the joint standing joint committee of the county of Southampton and the county borough of Bournemouth and the standing joint committee of the county of the Isle of Wight shall be transferred to the Hampshire police authority.

4. The expenses of the Hampshire constabulary and of the Hampshire police authority shall be paid out of the combined police fund which shall be called the Hampshire police fund, and shall be constituted and administered in accordance with the provisions of the Second Schedule hereto.

5. Subject to the provisions of paragraph 11, at the time of transfer there shall be transferred to the Hampshire police authority, all property, rights and liabilities of the county councils of the county of Southampton and of the Isle of Wight and of the Bournemouth county borough council and the joint standing joint committee of the county of Southampton and the county borough of Bournemouth and the standing joint committee of the Isle of Wight held or incurred for police purposes.

6.—(1) The Hampshire police authority shall appoint a clerk of the authority and a treasurer of the Hampshire police fund and may appoint a deputy clerk of the authority and a deputy treasurer of the fund for the purpose of acting in the place of the officer of whom he is deputy whenever the office is vacant or the holder thereof for any reason is unable to act, and any person so appointed deputy, when acting as such and subject to the terms of his appointment, shall have all the functions of the holder of the office.

(2) All officers and servants employed in a civilian capacity immediately before the time of transfer by the county council of the county of Southampton or by the standing joint committee of that county solely for police purposes shall be transferred to and become officers or servants of the Hampshire police authority and shall be employed by that authority upon the terms and conditions upon which they were employed immediately before that time.

(3) The Hampshire police authority may appoint such other officers and servants as they think necessary for the efficient discharge of their functions.

(4) The provisions of the Third Schedule hereto shall have effect in relation to officers and servants of the Hampshire police authority.

7. The Hampshire police authority may delegate to the standing joint committee of the county of Southampton or the county of the Isle of Wight or to the Bournemouth county borough council in respect of matters relating to the county of Southampton or the county of the Isle of Wight or the county borough of Bournemouth, as the case may be, any of their functions under section 5 of the Police, Factories, etc. (Miscellaneous Provisions) Act, 1916, or under the House to House Collections Act, 1939.

8. The Hampshire county council superannuation fund shall be the appropriate superannuation fund for the purposes of the Local Government Superannuation Act, 1937, in relation to contributory employees of the Hampshire police authority.

9. The Hampshire police authority may make arrangements with the county council of the county of Southampton, the county council of the Isle of Wight and the Bournemouth county borough council or any of them for the use by the Hampshire police authority of the services of officers and servants of those authorities and for the making of contracts and payments on behalf of the Hampshire police authority by those authorities.

10. The appropriate authority for the purposes of the Police Act, 1946, section 10 (Compensation of officers prejudicially affected) shall be the Hampshire police authority.

11.—(1) The Police Amalgamation (Hampshire) Order, 1943, and the Police Amalgamation (Hampshire) Order, 1944, are hereby revoked.

(2) The police account of the county of Southampton relating to the Hampshire joint police force shall be made up to the time of transfer and any moneys due or payable in connection therewith shall not be transferred under the provisions of this Scheme.

(3) Notwithstanding the revocation of the said Orders any payments or credits under the Schedule to the Police Amalgamation (Hampshire) Order, 1943, as amended by the Police Amalgamation (Hampshire) Order, 1944, which if the said Orders had continued to be in force would have been due in respect of the period during which they were in force shall continue to be due and shall be paid as soon as possible after the amounts have been ascertained.

12. This Scheme shall come into operation immediately before the first day of April, 1947.

## FIRST SCHEDULE

### HAMPSHIRE POLICE AUTHORITY

1. The Hampshire police authority shall consist of thirty-one members.

2. In accordance with the provisions of this Schedule the undermentioned bodies shall appoint the number of representatives set out against each from among its members to be members of the Hampshire police authority :

County of Southampton standing joint committee	..	..	20
County of the Isle of Wight standing joint committee	..	..	5
Bournemouth county borough council	..	..	6
			—
			31
			—

3.—(1) Each member of the Hampshire police authority first appointed shall come into office on the first day of April, 1947, or so soon thereafter as he shall be appointed, and subject to the provisions of paragraphs 4 and 6 hereof, shall hold office until the thirty-first day of March, 1949.

(2) On or before the first day of April, 1949, and in every third year thereafter, being the year in which county councillors are elected, each appointing authority shall appoint its representatives on the Hampshire police authority each of whom shall come into office on the first day of April in the year of his appointment, and subject to the provisions of paragraphs 4 and 6 hereof, shall hold office for three years.

4. If a member of the Hampshire police authority dies, resigns or becomes disqualified the appointing authority shall appoint a successor who shall come into office on the date of his appointment and unless he dies, resigns or becomes disqualified shall hold office for the remainder of the period for which his predecessor would have held office had he not died, resigned or become disqualified.

5. A member of the Hampshire police authority may resign his membership by giving the clerk of that authority notice in writing of his intention to do so, who shall forthwith notify the vacancy to the clerk of the appointing authority.

6.—(1) A member of the Hampshire police authority who ceases to be a member of the appointing authority shall cease to be a member of the Hampshire police authority unless on or before the date on which he ceases to be a member of the appointing authority he has been re-elected a member of the appointing authority.

(2) A member of the Hampshire police authority shall be disqualified from being a member of that authority if he holds any paid office, or other place of profit in the gift or disposal of the authority.

7. The Hampshire police authority from among its members shall elect annually a chairman and a vice-chairman.

8. The first meeting of the Hampshire police authority shall be convened by the chairman of the county of Southampton standing joint committee within two weeks after this Scheme comes into operation, and subsequent meetings shall be convened in such manner as the Hampshire police authority shall determine.

9. At a meeting of the Hampshire police authority seven or such greater number as the authority may by standing orders determine shall be a quorum.

10. The following provisions of the Local Government Act, 1933, namely, sections 58, 60, 76, subsections (1) and (2) of section 294 and Part V of the Third Schedule shall apply to the Hampshire police authority and the members thereof as if references in the said provisions to a local authority, other than references to a parish council, were references to the Hampshire police authority and references to that Act were references to this Scheme.

## SECOND SCHEDULE

### HAMPSHIRE POLICE FUND

1.—(1) In respect of each financial year each contributing authority shall pay to the Hampshire police fund in accordance with sub-paragraphs (2) and (3) of this paragraph a sum equal to its appropriate contribution in respect of that year.

(2) On the first day of each month in each financial year each contributing authority shall make a monthly interim payment into the Hampshire police fund on account of its contribution payable under sub-paragraph (1) of this paragraph in respect of that year of an amount equal to one-twelfth of the amount of that contribution as estimated by the Hampshire police authority :

Provided that the Hampshire police authority may, from time to time, revise the said estimate and the monthly interim payments payable during that year after all the contributing authorities have been notified of the revision shall be so increased or reduced as to adjust the difference.

(3) Any difference between the total of the monthly interim payments made in respect of any financial year and the contribution payable in respect of that year shall be adjusted at the interim payment date next after the date on which the contribution payable in respect of that year has been ascertained, by a payment by, or a credit to, the contributing authority which has made the payments.

2.—(1) The appropriate contribution in the case of the Bournemouth county borough shall be the actual cost of the police in the county borough less any Government grant attributable to the cost together with a contribution to overhead police expenditure common to the county borough and any other part of the Hampshire police area proportionate to the average number of constables stationed in the county borough as compared with the total force in the part of the area to which that overhead expenditure relates less any Government grant attributable to that expenditure.

(2) The appropriate contribution in the case of the county of Southampton and the county of the Isle of Wight shall be the amount represented by the net expenses of the Hampshire police authority after deducting the appropriate contribution of the Bournemouth county borough council calculated in accordance with sub-paragraph (1) of this paragraph divided between the Southampton county council and the Isle of Wight county council in the proportion that the rateable value of the respective administrative counties bears to the aggregate rateable value of the two administrative counties combined as shown in the valuation list in force two months before the commencement of the financial year.

### General

3. In addition to the contributions payable under paragraph 1 of this Schedule each contributing authority—

- (a) with all convenient speed shall pay to the Hampshire police fund any income which has not been brought into account before the time of transfer and but for the operation of this Scheme would have been credited to its police account, not being income received from the investment of financial adjustment funds ;
- (b) shall within 14 days after this Scheme comes into operation pay into the Hampshire police fund the sums set opposite to its name in the subjoined table :—

TABLE

	£	s.	d.
Southampton county council .. .. .	17,500	0	0
Isle of Wight county council .. .. .	3,000	0	0
Bournemouth county borough council .. .. .	4,500	0	0

*Definitions*

4.—(1) In this Schedule the following expressions have the meanings hereafter respectively assigned to them, that is to say :—

“contributing authority” means each of the following, namely, the Southampton county council, the Isle of Wight county council and the Bournemouth county borough council ;

“financial year” means the period of twelve months ending on the thirty-first day of March.

(2) For the purposes of this Schedule, “the net expenses of the Hampshire police authority” in respect of any financial year shall be the amount of its expenditure in respect of that year less all income (including Government grant) which is credited to the Hampshire police fund in respect of that year, other than contributions payable under paragraph 1 of this Schedule, into the Hampshire police fund and the said net expenses may, if the Hampshire police authority so resolve, include sums which the said authority think it desirable to raise, although the liability which those sums are intended to satisfy will not or may not fall due during the financial year.

**THIRD SCHEDULE****OFFICERS AND SERVANTS OF THE HAMPSHIRE POLICE AUTHORITY**

1. The clerk of the Hampshire police authority and the treasurer of the Hampshire police fund shall hold office during the pleasure of the authority so however that neither of them shall be dismissed from his office without the consent of the Secretary of State.

2. The offices of clerk of the Hampshire police authority and of treasurer of the Hampshire police fund shall not be held by the same person, or by persons who stand in relation to one another as partners or as employer and employee.

3. Subject to paragraph 1 above every officer and servant of the Hampshire police authority shall hold office during the pleasure of the authority.

4. The following provisions of the Local Government Act, 1933, namely, subsections (1), (2) and (4) of section 119 and sections 120, 121, 122 and 123 shall apply to the officers and servants of the Hampshire police authority as if references in those provisions to a local authority, other than references to a parish council, were references to the Hampshire police authority and references to that Act were references to this Scheme. [1197]

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**PETERBOROUGH POLICE (AMALGAMATION) ORDER,  
1947**

*S. R. & O., 1947, No. 568*

*March 28, 1947*

Whereas on the thirtieth day of June, 1939, the population of the city of Peterborough as estimated by the Registrar General exceeded one half of the population as so estimated of the administrative county comprising the said city :

And whereas by subsection (1) of section seventeen of the Police Act, 1946, the provisions of the said Act apply to the said city as if it were a county borough and references in the said Act to county boroughs are to be construed accordingly :

And whereas the police authorities for the police areas consisting of the said city and of the Liberty of Peterborough have submitted to me a scheme for the amalgamation of the said police areas :

Now, therefore, in pursuance of the powers conferred upon me by subsection (1) of section three of the Police Act, 1946, I [*i.e.* the Secretary of State], by this Order, approve the said Scheme which is set out in the Schedule hereto.



This Order may be cited as the Peterborough Police (Amalgamation) Order, 1947. [1198]

\* \* \* \* \*

## SCHEDULE

### THE PETERBOROUGH POLICE AMALGAMATION SCHEME, 1947

*Made by the City of Peterborough and the Standing Joint Committee for the Liberty of Peterborough under section 3 of the Police Act, 1946*

This Scheme (hereinafter referred to as the "Amalgamation Scheme") is made in pursuance of section 3 of the Police Act, 1946, inasmuch as the police authorities of the city of Peterborough and the Liberty of Peterborough deem it expedient that the two areas should be amalgamated for police purposes.

1. On the first day of April, 1947 (hereafter in this Scheme referred to as the "date of transfer"), the police areas consisting respectively of the city of Peterborough and the area of the administrative county of the Soke of Peterborough exclusive of the said city shall be amalgamated for police purposes and become one combined police area which shall be called the "Peterborough combined police area."

2.—(1) On the date of transfer there shall be established for the Peterborough combined police area a combined police force which shall be called the "Peterborough combined police force."

(2) All members of the city of Peterborough police force and the Liberty of Peterborough police force shall, on the date of transfer, be transferred to the Peterborough combined police force.

(3) Francis George Markin, Esquire, the present chief constable of both the city of Peterborough and the Liberty of Peterborough police forces, is hereby appointed the first chief constable of the Peterborough combined police force.

3.—(1) The Peterborough combined police force shall be maintained by a combined police authority which shall be called the "Peterborough combined police authority" and which shall be constituted in accordance with the provisions of the First Schedule hereto.

(2) On the date of transfer the police functions of the watch committee of the Peterborough city council and of the standing joint committee for the Liberty of Peterborough respectively shall be transferred to the Peterborough combined police authority.

4. The expenses of the Peterborough combined police force and of the Peterborough combined police authority shall be paid out of the combined police fund, which shall be called the "Peterborough combined police fund" and which shall be constituted and administered in accordance with the provisions of the Second Schedule hereto.

5.—(1) Subject to the provisions of sub-paragraphs (2) and (3) of this paragraph, there shall be transferred on the date of transfer to the Peterborough combined police authority all property, rights and liabilities of the Peterborough city council and of the Soke of Peterborough county council and the watch committee of the city of Peterborough and the standing joint committee for the Liberty of Peterborough insofar as such property, rights and liabilities are held or incurred in connection with the city of Peterborough police force and the Liberty of Peterborough police force respectively.

(2) The property described in Parts I and II of the Third Schedule hereto shall not be transferred to the Peterborough combined police authority.

(3) The Soke of Peterborough county council shall permit the use of the property described in Part II of the Third Schedule hereto by the Peterborough combined police authority in such manner and on such terms as may, from time to time, be agreed between the said police authority and the county council or, in default of agreement, as may from time to time be determined by the Secretary of State.

6.—(1) The Peterborough combined police authority shall appoint a clerk of the authority and a treasurer of the Peterborough combined police fund and may appoint a deputy clerk of the authority and a deputy treasurer of the fund for the



purpose of acting in the place of the officer of whom he is deputy whenever the office is vacant or the holder thereof for any reason is unable to act, and any person so appointed deputy, when acting as such and subject to the terms of his appointment, shall have all the functions of the holder of the office.

(2) The Peterborough combined police authority may appoint such other officers and servants as they think necessary for the efficient discharge of their functions.

(3) There shall be transferred on the date of transfer to the Peterborough combined police authority the officers and servants of the Peterborough city council and the Soke of Peterborough county council whose names appear in Part I of the Fourth Schedule hereto, and such officers and servants shall be employed by the Peterborough combined police authority upon the terms and conditions upon which they were respectively employed by the said city council or county council immediately before the date of transfer. The Peterborough combined police authority may make arrangements with either the Peterborough city council or the Soke of Peterborough county council, as the case may be, for the use by the Peterborough combined police authority of the services of officers and servants of such councils and the making of contracts and payments on behalf of the Peterborough combined police authority by such councils.

(4) Any compensation payable in pursuance of section 10 of the Police Act, 1946, to an officer or servant prejudicially affected in consequence of the coming into operation of this Scheme shall be awarded and paid by the Peterborough combined police authority, and the claim for compensation shall be made by the officer or servant accordingly and the Peterborough combined police authority shall be the "appropriate authority" for the purposes of the said section.

(5) The provisions of Part II of the Fourth Schedule hereto shall have effect in relation to officers and servants of the Peterborough combined police authority.

7. The Peterborough combined police authority may delegate to the watch committee of the Peterborough city council or the standing joint committee for the Liberty of Peterborough, so far as their respective areas are concerned, any of the functions of the said combined police authority under section 5 of the Police, Factories, etc. (Miscellaneous Provisions) Act, 1916, or under the House to House Collections Act, 1939.

## FIRST SCHEDULE

### CONSTITUTION OF PETERBOROUGH COMBINED POLICE AUTHORITY

1. The Peterborough combined police authority shall consist of sixteen members.
2. In accordance with the provisions of this Schedule, the Peterborough city council shall appoint ten representatives from among its members and the standing joint committee for the Liberty of Peterborough shall appoint six representatives (three of whom shall be members of the Soke of Peterborough county council and the remaining three of whom shall be Justices for the Liberty of Peterborough) to be members of the Peterborough combined police authority. If the same person is appointed a member of the combined police authority by both the appointing authorities referred to that person shall select the appointment which he desires to accept and the other appointing authority shall thereupon make a further appointment.
3. Subject to the provisions of paragraph 5 hereof each member of the Peterborough combined police authority shall come into office on the first day of April next after his appointment and unless he dies, resigns or becomes disqualified shall hold office for three years or until his successor comes into office, whichever is the longer period.
4. The clerk of each appointing authority shall forthwith after the appointment of the first members of the Peterborough combined police authority notify the names, addresses and descriptions of the said members to the mayor of the city of Peterborough, and in the case of every subsequent appointment of members the said clerks shall furnish similar particulars to the clerk of the combined police authority.
- 5.—(1) If a member of the Peterborough combined police authority dies, resigns or becomes disqualified the appointing authority shall appoint a successor who shall come into office on the date of his appointment and unless he dies, resigns or becomes disqualified shall hold office for the remainder of the period for which

his predecessor would have held office had he not died, resigned or become disqualified :

Provided that if a member dies, resigns or becomes disqualified within three months before the end of a period of three years from the date on which he came into office, the member appointed as his successor unless he in turn dies, resigns or becomes disqualified shall hold office from the date of his appointment either until the expiry of three years from the first day of April next after his appointment, or until his successor comes into office, whichever is the longer period.

(2) Each of the first representatives of each appointing authority shall come into office on the date of his appointment if after the first day of April, 1947, and unless he dies, resigns or becomes disqualified shall hold office from the date of his appointment either until the thirty-first day of March, 1949, or until his successor comes into office, whichever is the longer period. Future appointments shall be made by the appointing authorities on or before the thirty-first day of March, 1949, and in every third year thereafter being the year in which county councillors are elected.

6. A member of the Peterborough combined police authority may resign his membership by giving notice in writing of his intention to do so to the clerk of that authority who shall thereupon notify the vacancy as soon as possible to the appropriate appointing authority.

7. A member of the Peterborough combined police authority who ceases to be a member of the appointing authority shall cease to be a member of the combined police authority unless on or before the date on which he ceases to be a member of the appointing authority he has been re-appointed a member of the appointing authority.

8. The first meeting of the Peterborough combined police authority shall be convened by the mayor of the city of Peterborough as soon as possible after the date of the appointment of the first members of the combined police authority and shall be held at such place as may be fixed by him.

9.—(1) The combined police authority shall in every year hold an annual meeting and at least three other meetings which shall be as near as may be at regular intervals for the transaction of their business.

(2) The annual meeting of the combined police authority shall be held on such day in the month of January as the combined police authority may determine.

10.—(1) The combined police authority at their annual meeting shall elect one of their number to be chairman and the chairman shall, unless he resigns his office or ceases to be a member of the combined police authority, continue in office until his successor is elected.

(2) The combined police authority at their annual meeting shall elect one of their number to be vice-chairman who shall, unless he resigns his office or ceases to be a member of the combined police authority, continue in office until immediately after the election of the chairman at the next annual meeting.

11.—(1) On a casual vacancy occurring in the office of chairman or vice-chairman of the combined police authority the vacancy shall be filled by the election by the combined police authority of one of their number at a meeting held as soon as possible after the vacancy occurs, and where the vacancy is in the office of chairman the meeting may be convened by the clerk of the combined authority.

(2) The person elected under the foregoing sub-paragraph to fill a casual vacancy shall hold office until the day upon which the person in whose place he is elected would ordinarily have retired.

12.—(1) At every meeting of the combined police authority the chairman, if present, shall preside.

(2) If the chairman is absent from any meeting of the combined police authority the vice-chairman, if present, shall preside.

(3) If both the chairman and vice-chairman of the combined police authority are absent from any meeting such member of the combined police authority as the members present shall determine shall preside.

13.—(1) The chairman of the combined police authority may call a meeting of the combined police authority at any time.

(2) If the chairman refuses to call a meeting of the combined police authority after a request for that purpose signed by three members of the combined police

authority has been presented to him or if, without so refusing, the chairman does not call a meeting within seven days after such a request has been presented to him, any three members of the combined police authority on that refusal or on the expiration of the seven days, as the case may be, may forthwith call a meeting of the combined police authority.

(3) Three clear days at least before a meeting of the combined police authority :—

- (a) notice of the time and place of the intended meeting shall be published at the offices of the combined police authority and, where the meeting is called by members of the combined police authority, the notice shall be signed by those members and shall specify the business proposed to be transacted thereat ; and
- (b) a summons to attend a meeting, specifying the business proposed to be transacted thereat and signed by the clerk of the combined police authority, shall be left at or sent by post to the usual place of residence of every member of the combined police authority, provided that omission to serve the said summons on any member of the combined police authority shall not invalidate the meeting and provided also that no business shall be transacted at any meeting called by members of the combined police authority other than that specified in the notice thereof.

14. At a meeting of the combined police authority four or such greater number as the authority may by standing orders determine shall be a quorum.

15. A copy of the minutes of proceedings at each meeting of the combined police authority shall be sent to the clerks of the appointing authorities within twenty-one days after the date of the meeting.

16. The accounts of the combined police authority shall be open at all reasonable times to inspection and transcription without payment by any member of an appointing authority or of the Soke of Peterborough county council or by any officer of an appointing authority authorised by that authority for the purpose.

17. A copy of the abstract of the accounts of the combined police authority and of any report to the combined police authority made by the district auditor shall be sent by the combined police authority to each of the appointing authorities and to the Soke of Peterborough county council as soon as may be practicable after the completion of the audit.

18. The following provisions of the Local Government Act, 1933, namely, sections 58, 59, 60, 63, 76, subsections (1) and (2) of section 294 and Part V of the Third Schedule shall apply to the combined police authority and the members thereof as if references in the said provisions to a local authority, other than references to a parish council, were references to the combined police authority and as if references to the said Act were references to this Scheme.

## SECOND SCHEDULE

### THE PETERBOROUGH COMBINED POLICE FUND

1.—(1) In respect of each financial year each contributing authority shall pay to the Peterborough combined police fund as hereinafter mentioned a contribution equal to its appropriate proportion of the net expenses of the combined police authority in respect of that year ; and notices accordingly shall be given by the combined police authority in respect of each financial half-year to each contributing authority requiring payment of such contributions within a time limited by the notices.

(2) In order to enable each contributing authority to comply with the provisions of paragraph (e) of subsection (2) of section 9 of the Rating and Valuation Act, 1925, any notice as hereinbefore mentioned given by the combined police authority shall be so given not less than forty-two days before the beginning of the financial half-year in which the rate required to meet the contributions required by such notice is to be levied.

2.—(1) Before the commencement of each financial year the combined police authority shall cause to be prepared and submitted to them an estimate of the whole of the income and expenditure of the combined police authority during that financial year and shall estimate the amount which will be required to be raised

by means of notices as aforesaid in the first half-year and in the second half-year of the financial year respectively.

(2) If before the expiration of the first half-year of the financial year it appears to the combined police authority that the amounts estimated at the commencement of the year will be larger than is necessary, or will be insufficient, the combined police authority may revise the estimate and alter the said amounts accordingly.

(3) Copies of the before-mentioned estimates or revised estimates when approved by the combined police authority shall, within seven days thereafter, be transmitted to the clerk of each contributing authority.

3. Each contributing authority shall on or before the fifteenth day of April, 1947, pay into the combined police fund the sum set opposite to its name in the following table, namely :—

	£	s.	d.
Peterborough city council .. .. .	900	0	0
Soke of Peterborough county council .. .. .	100	0	0

4. In addition to the contributions payable as hereinbefore mentioned, each contributing authority with all convenient speed shall pay into the combined police fund any income which has not been brought into account before the date of transfer and, but for the operation of this Scheme, would have been credited to its police account, not being income received from the investment of financial adjustment funds.

5.—(1) All payments to and out of the combined police fund shall be made to and by the treasurer.

(2) All payments out of the combined police fund shall be made in pursuance of an order on the combined police authority signed by at least two members thereof and countersigned by the clerk or by such other officer as the combined police authority may authorise for the purpose, and the same order may include several payments.

6.—(1) In this Schedule the following expressions have the meanings hereafter respectively assigned to them, that is to say :—

“contributing authority” means each of the following, namely, the Peterborough city council and the Soke of Peterborough county council.

“appropriate proportion” means the proportion which (a) in the case of the Peterborough city council the aggregate rateable value of all the hereditaments in the area of the said city and (b) in the case of the Soke of Peterborough county council the aggregate rateable value of all the hereditaments in the area of the administrative county of the Soke of Peterborough exclusive of the said city bears to the aggregate rateable value of all the hereditaments in the combined police area as shown in the valuation list in force at the commencement of the half-year immediately preceding the financial half-year which is the subject of the notice aforesaid.

“financial year” means the period of twelve months ending on the thirty-first day of March.

(2) For the purposes of this Schedule the net expenses of the combined police authority in respect of any financial year shall be the amount of its expenditure in respect of that year less all income (including government grant) which is credited to the combined police fund in respect of that year, other than contributions payable under paragraphs 1 and 3 of this Schedule into the combined police fund.

### THIRD SCHEDULE

#### PROPERTY NOT TRANSFERRED TO THE PETERBOROUGH COMBINED POLICE AUTHORITY

##### PART I

##### *Property subject to no rights of user*

The following property of the Peterborough city council :—

All those two messuages or dwelling-houses and shops with the outbuildings, yards and appurtenances thereto belonging situate and being numbers 107 and 109 Bridge Street in the city of Peterborough.

All those pieces or parcels of land in the city of Peterborough in the county of the Soke of Peterborough having a combined frontage to Bridge Street of sixty-five feet or thereabouts and containing together nine hundred and sixty-eight square yards or thereabouts, together with the messuage shop and buildings erected thereon and known as numbers 111 and 113 Bridge Street aforesaid.

## PART II

### *Property subject to rights of user*

The following property of the Soke of Peterborough county council :—

The Gaol Buildings, Thrope Road, Peterborough—subject to the right of the combined police authority to rent at a rent to be agreed with such council the portions of such buildings at present occupied by two police officers of the city of Peterborough police force.

## FOURTH SCHEDULE

### PART I

#### *Transferred officers and servants*

Miss Joyce ANDREWS  
Miss Joy Doreen BREWIN  
Miss Peggy DICKINS  
Mr. Godfrey GALE  
Mrs. Edith WILCOX  
Miss Eileen WILSON

### PART II

#### *Officers and servants of the Peterborough combined police authority*

1. The clerk of the combined police authority and the treasurer of the combined police fund shall hold office during the pleasure of the authority so however that neither of them shall be dismissed from his office without the consent of the Secretary of State.
2. The offices of clerk of the combined police authority and of treasurer of the combined police fund shall not be held by the same person or by persons who stand in relation to one another as partners or as employer and employee.
3. Subject to paragraph 1 above, every officer and servant of the combined police authority shall hold office during the pleasure of the authority.
4. In relation to contributory employees of the combined police authority the appropriate superannuation fund for the purposes of the Local Government Superannuation Act, 1937, as applied by subsection (7) of section 5 of the Police Act, 1946, shall be the superannuation fund administered by the Peterborough city council.
5. The following provisions of the Local Government Act, 1933, namely, subsections (1), (2) and (4) of section 119, and sections 120, 121, 122 and 123 shall apply to the officers and servants of the combined police authority as if references in those provisions to a local authority, other than references to a parish council, were references to the combined police authority and as if references to the said Act were references to this Scheme. [1199]

## CORNWALL AND ISLES OF SCILLY POLICE (AMALGAMATION) ORDER, 1947

*S. R. & O., 1947, No. 579*

*March 31, 1947*

Whereas by section eighteen of the Police Act 1946, the said Act applies to the Isles of Scilly as if they were a county :

And whereas the police authorities for the following police areas, namely, the county of Cornwall and the Isles of Scilly, have submitted to me a Scheme for the amalgamation of the said police areas :

Now, therefore, in pursuance of the powers conferred upon me by subsection (1) of section three of the Police Act, 1946, I [*i.e.* the Secretary of State], by this Order, approve the said Scheme as set out in the Schedule hereto.

This Order may be cited as the Cornwall and Isles of Scilly Police (Amalgamation) Order, 1947. [1200]

\* \* \* \* \*

### SCHEDULE

#### THE CORNWALL AND ISLES OF SCILLY POLICE AMALGAMATION SCHEME, 1947

1. At the following time (hereinafter in this Scheme referred to as the "time of transfer"), namely, immediately before the first day of April, 1947, the police areas consisting of the administrative county of Cornwall and the Isles of Scilly shall be amalgamated for police purposes and become one combined police area which shall be called the Cornwall and Isles of Scilly combined police area.

2.—(1) At the time of transfer there shall be established for the Cornwall and Isles of Scilly combined police area a combined police force which shall be called the Cornwall county constabulary (hereafter in this Scheme referred to as the "combined force").

(2) All members of the present Cornwall county constabulary shall, at the time of transfer, be transferred to the combined force.

(3) Major Edgar Hare, M.C., who is the chief constable of Cornwall, is hereby appointed the first chief constable of the combined force.

3.—(1) The combined force shall be maintained by a combined police authority which shall be called the Cornwall and Isles of Scilly combined police authority (hereafter in this Scheme referred to as the "combined police authority").

(2) The combined police authority shall be constituted in accordance with the provisions of the First Schedule hereto.

(3) At the time of transfer the police functions of the standing joint committee of Cornwall and the joint police committee of the Isles of Scilly shall be transferred to the combined police authority.

4. The expenses of the combined force and combined police authority shall be paid out of a combined police fund which shall be called the Cornwall and Isles of Scilly combined police fund and shall be constituted and administered in accordance with the provisions of the Second Schedule hereto.

5. There shall be transferred at the time of transfer to the combined police authority all property, rights and liabilities of the county council and the standing joint committee of Cornwall and the council and joint police committee of the Isles of Scilly held or incurred for police purposes.

6.—(1) The combined police authority shall appoint the clerk of the authority and treasurer of the Cornwall and Isles of Scilly combined police fund, and may appoint a deputy clerk of the authority and a deputy treasurer of the fund for the purpose of acting in the place of the officer of whom he is deputy whenever the office is vacant or the holder thereof for any reason is unable to act; and any person so appointed deputy, when acting as such and subject to the terms of his appointment, shall have all the functions of the holder of the office.

(2) The combined police authority may appoint such other officers and servants as they think necessary for the efficient discharge of their functions.

(3) At the time of transfer there shall be transferred to the service of the combined police authority anyone who immediately before that time was employed by the Cornwall county council solely or mainly for the purposes of the exercise by the council or the standing joint committee of the county of any functions connected with the police and has not before the said time notified the county council in writing of his refusal to be so transferred.

(4) The provisions of the Third Schedule hereto shall have effect in relation to officers and servants of the combined police authority.

7. The combined police authority may delegate to the standing joint committee of Cornwall or the joint police committee of the Isles of Scilly in respect of matters



relating to Cornwall or, as the case may be, to the Isles of Scilly any of their functions under section 5 of the Police, Factories, etc. (Miscellaneous Provisions) Act, 1916, or under the House to House Collections Act, 1939.

8. The combined police authority may make arrangements with either the Cornwall county council or the council of the Isles of Scilly for the use by the combined police authority of the services of officers and servants of the said councils and the making of contracts and payments on behalf of the combined police authority by the said councils.

9. In relation to contributory employees of the combined police authority under the Local Government Superannuation Act, 1937, the appropriate superannuation fund for the purposes of that Act shall be the superannuation fund maintained under Part I of that Act by the Cornwall county council.

10. The "appropriate authority" for the purposes of section 10 of the Police Act, 1946, shall be the combined police authority.

### FIRST SCHEDULE

#### *Cornwall and Isles of Scilly Combined Police Authority*

1. The Cornwall and Isles of Scilly combined police authority (hereafter in this Schedule referred to as "the authority") shall, subject to paragraph 5 hereof, consist of all the members for the time being of the standing joint committee of Cornwall and such members of the joint police committee of the Isles of Scilly as are appointed to be members of the authority in accordance with the provisions of paragraph 2 of this Schedule.

2.—(1) The justices who are members of the joint police committee and the members of the council of the Isles of Scilly who are members of the joint police committee shall each appoint one of their number to be a member of the authority for such period as may be determined by the said committee.

(2) In addition to the two members of the authority appointed under sub-paragraph (1), for each alternate period of three years beginning with the first day of April, 1947, the said justices shall appoint one of their number to be a member of the authority, and for each alternate period of three years beginning with the first day of April, 1950, the said members of the council shall appoint one of their number to be a member of the authority.

(3) As often as a member of the authority appointed under sub-paragraph (2) may die, resign or become disqualified, a successor to him shall be appointed in the same manner as the member who has died, resigned or become disqualified for the remainder of the current period of three years.

3. A member of the authority appointed under paragraph 2 may resign his membership by giving the clerk of the authority notice in writing of his intention to do so.

4. A member of the authority appointed under paragraph 2 who ceases to be a member of the joint police committee shall cease to be a member of the authority unless, on or before the date on which he ceases to be a member of the said committee, he has been reappointed a member of that committee.

5. A member of the authority shall be disqualified from being such a member if he holds any paid office or other place of profit in the gift or disposal of the authority.

6.—(1) The authority from among its members shall elect a chairman and may elect a vice-chairman.

(2) The tenure of office of the chairman and of a vice-chairman shall be such as the authority by standing orders may determine.

7. At a meeting of the authority ten, or such greater number as the authority by standing orders may determine, shall be a quorum.

8. The following provisions of the Local Government Act, 1933, namely, sections 58, 60, 76, subsections (1) and (2) of section 294 and Part V of the Third Schedule, shall apply to the authority and the members thereof as if references in the said provisions to a local authority, other than references to a parish council, were references to the authority, and references to that Act were references to this Scheme.



## SECOND SCHEDULE

*Cornwall and Isles of Scilly Combined Police Fund*

1.—(1) In respect of each financial year each contributing authority shall pay to the Cornwall and Isles of Scilly combined police fund (hereafter called the "combined police fund") in accordance with sub-paragraphs (2) and (3) of this paragraph a contribution equal to its appropriate proportion of the net expenses of the combined police authority in respect of that year.

(2) The Cornwall county council on the first day of each month and the council of the Isles of Scilly on each of the four usual quarter days shall make a monthly or quarterly, as the case may be, interim payment into the combined police fund on account of its contributions payable under sub-paragraph (1) of this paragraph in respect of that year of an amount equal to one-twelfth or one-quarter, as the case may be, of that contribution as estimated by the treasurer of the combined police fund :

Provided that the treasurer of the combined police fund may, from time to time, revise his said estimate and the monthly or quarterly, as the case may be, interim payments payable during the remainder of that year after all the contributing authorities have been notified of the revision shall be so increased or reduced as to adjust the difference.

(3) Any difference between the total of the monthly or quarterly, as the case may be, interim payments made in respect of any financial year and the contribution payable in respect of that year shall be adjusted at the first respective interim payment dates next after the date on which the contribution payable in respect of that year has been ascertained by a payment by or a credit to the contributing authority which has made the payments.

2. In addition to the contributions payable under paragraph 1 of this Schedule each contributing authority with all convenient speed shall pay into the combined police fund any income which has not been brought into account before the commencement of this Scheme and, but for the operation of this Scheme, would have been credited to its police account, not being income received from the investment of financial adjustment funds.

3.—(1) In this Schedule the following expressions have the meanings hereafter respectively assigned to them, that is to say :—

"appropriate proportion" means, in the case of each contributing authority, the proportion which the aggregate rateable value of all the hereditaments in the area of the contributing authority bears to the aggregate rateable value of all the hereditaments in the Cornwall and Isles of Scilly combined police area as shown in the valuation list in force two months before the commencement of the financial year ;

"contributing authority" means the Cornwall county council and the council of the Isles of Scilly ;

"financial year" means the period of twelve months ending on the thirty-first day of March.

(2) For the purposes of this Schedule the net expenses of the combined police authority in respect of any financial year shall be the amount of its expenditure in respect of that year less all income (including Government grant) which is credited to the combined police fund in respect of that year, other than contributions payable under paragraph 1, and the said net expenses may, if the combined police authority so resolve, include sums which the said authority think it desirable to raise, although the liability which those sums are intended to satisfy will not, or may not, fall due during the financial year.

## THIRD SCHEDULE

*Officers and servants of the Cornwall and Isles of Scilly Combined Police Authority*

1. The clerk of the Cornwall and Isles of Scilly combined police authority and the treasurer of the Cornwall and Isles of Scilly combined police fund shall hold office during the pleasure of the authority so however that neither of them shall be dismissed from his office without the consent of the Secretary of State.

2. The offices of clerk of the Cornwall and Isles of Scilly combined police authority and of treasurer of the Cornwall and Isles of Scilly combined police fund shall not be held by the same person, or by persons who stand in relation to one another as partners or as employer and employee.

3. Subject to paragraph 1 every officer and servant of the Cornwall and Isles of Scilly combined police authority shall hold office during the pleasure of the authority.

4. The following provisions of the Local Government Act, 1933, namely, subsections (1), (2) and (4) of section 119, and sections 120, 121, 122 and 123 shall apply to the officers and servants of the Cornwall and Isles of Scilly combined police authority as if references in those provisions to a local authority, other than references to a parish council, were references to the Cornwall and Isles of Scilly combined police authority, and references to that Act were references to this Scheme. [1201]

## KENT POLICE (AMALGAMATION) ORDER, 1947

*S. R. & O., 1947, No. 580*

*March 31, 1947*

Whereas the police authorities for the following police areas, namely, the administrative county of Kent except that part thereof that is within the Metropolitan Police District and the county borough of Canterbury, have submitted to me a Scheme for the amalgamation of the said police areas :

Now, therefore, in pursuance of the powers conferred upon me by subsection (1) of section three of the Police Act, 1946, I [*i.e.* the Secretary of State], by this Order, approve the said Scheme which is set out in the Schedule hereto.

This Order may be cited as the Kent Police (Amalgamation) Order, 1947. [1202]

\* \* \* \* \*

### SCHEDULE

#### THE KENT POLICE AMALGAMATION SCHEME, 1947

1. At the following time (hereafter in this Scheme referred to as the "time of transfer") namely, immediately before the first day of April, 1947, the police areas consisting of the administrative county of Kent except that part thereof that is within the Metropolitan Police District and the county borough of Canterbury shall be amalgamated for police purposes and become one combined police area which shall be called the Kent police area.

2.—(1) At the time of transfer there shall be established for the Kent police area a combined police force which shall be called the Kent police force.

(2) With the exception of Superintendent George Thomas Hall who, prior to the coming into force of the Police Amalgamation (Kent) Order, 1943, was chief constable of Canterbury, all members of the present Kent county police force shall at the time of transfer be transferred to the Kent police force.

(3) Major John Frederick Ferguson, who is chief constable of Kent, is hereby appointed the first chief constable of the Kent police force.

3.—(1) The Kent police force shall be maintained by a combined police authority which shall be called the Kent police authority.

(2) The Kent police authority shall be constituted in accordance with the provisions of the First Schedule hereto.

(3) At the time of transfer the police functions of the standing joint committee of Kent and the county borough council and the watch committee of Canterbury shall be transferred to the Kent police authority.

4. The expenses of the Kent police force and of the Kent police authority shall be paid out of the combined police fund which shall be called the Kent police fund, and shall be constituted and administered in accordance with the provisions of the Second Schedule hereto.

5. There shall be transferred at the time of transfer to the Kent police authority all property, rights and liabilities of the county council and the standing joint

committee of Kent and the county borough council and the watch committee of Canterbury held or incurred in connection with the police forces of Kent or Canterbury or the joint police force which was established under the Police Amalgamation (Kent) Order, 1943.

6.—(1) The Kent police authority shall appoint a clerk of the authority and a treasurer of the Kent police fund and may appoint a deputy clerk of the authority and a deputy treasurer of the fund for the purpose of acting in the place of the officer of whom he is deputy, whenever the office is vacant or the holder thereof for any reason is unable to act and any person so appointed deputy, when acting as such and subject to the terms of his appointment, shall have all the functions of the holder of the office.

(2) The Kent police authority may appoint such other officers and servants as they think necessary for the efficient discharge of their functions.

(3) At the time of transfer there shall be transferred to the service of the Kent police authority the civilian officers and servants who immediately before that time were employed by the county council or standing joint committee of Kent to perform duties in or with the police force but the provisions of this sub-paragraph shall not apply to professional, technical, administrative or clerical officers employed by the Kent county council mainly or partly for the purposes of the exercise by the council or the standing joint committee of the county of any functions connected with the police.

(4) The provisions of the Third Schedule hereto shall have effect in relation to officers and servants of the Kent police authority.

7. The Kent police authority may delegate to the standing joint committee of Kent or the watch committee of Canterbury in respect of matters relating to Kent or, as the case may be, Canterbury any of their functions under section 5 of the Police, Factories, etc. (Miscellaneous Provisions) Act, 1916, or under the House to House Collections Act, 1939.

8. The Kent police authority may make arrangements with either the Kent county council or the Canterbury county borough council for the use by the Kent police authority of the services of officers and servants of that council and the making of contracts and payments on behalf of the Kent police authority by the said council.

9. In relation to contributory employees of the Kent police authority under the Local Government Superannuation Act, 1937, the appropriate superannuation fund for the purposes of that Act shall be the superannuation fund maintained under Part I of that Act by the Kent county council.

10. The "appropriate authority" for the purpose of section 10 of the Police Act, 1946, shall be the Kent police authority.

## FIRST SCHEDULE

### *Kent police authority*

1. The Kent police authority shall consist of eighteen members.

2. In accordance with the provisions of this Schedule the Kent standing joint committee shall appoint sixteen representatives being members of the committee and the Canterbury watch committee shall appoint two representatives from among its members to be members of the Kent police authority.

3.—(1) Each member of the Kent police authority first appointed shall come into office on the first day of April, 1947, or so soon thereafter as he shall be appointed and, subject to the provisions of paragraphs 4 and 6 hereof, shall hold office until the first day of April, 1949.

(2) On or before the thirty-first day of March, 1949, and in every third year thereafter, being the year in which county councillors are elected, each appointing authority shall appoint its representatives on the Kent police authority each of whom shall come into office on the first day of April in the year of his appointment and, subject to the provisions of paragraphs 4 and 6 hereof, shall hold office for three years.

4.—(1) If a member of the Kent police authority dies, resigns, becomes disqualified or ceases under paragraph 6 (1) hereof to be a member of the Kent police authority the appointing authority shall appoint a successor who shall come into

office on the date of his appointment and unless he dies, resigns, becomes disqualified or ceases under paragraph 6 (1) hereof to be a member of the Kent police authority shall hold office for the remainder of the period for which his predecessor would have held office had he not died, resigned, become disqualified or ceased to be a member :

Provided that if, within six months before the end of the period for which he was appointed, a member dies, resigns, becomes disqualified or ceases under paragraph 6 (1) hereof to be a member of the Kent police authority it shall not be necessary for the appointing authority to appoint a successor to such member for the remainder of such period.

5. A member of the Kent police authority may resign his membership by giving the clerk of that authority notice in writing of his intention so to do.

6.—(1) A member of the Kent police authority who ceases to be a member of the appointing authority shall cease to be a member of the Kent police authority unless on or before the date on which he ceases to be a member of the appointing authority he has been re-appointed a member of the appointing authority.

(2) A member of the Kent police authority shall be disqualified from being a member of that authority if he holds any paid office, or other place of profit in the gift or disposal of the authority.

7.—(1) The Kent police authority from among its members shall elect a chairman and may elect a vice-chairman.

(2) The tenure of office of the chairman and of a vice-chairman shall be such as the authority may determine.

8. The first meeting of the Kent police authority shall be convened on the instructions of the chairman of the Kent standing joint committee within four weeks after this Scheme comes into operation, and subsequent meetings shall be convened in such manner as the Kent police authority shall determine.

9. At a meeting of the Kent police authority two or such greater number as the authority may determine shall be a quorum.

10. The following provisions of the Local Government Act, 1933, namely, sections 58, 60, 76, subsections (1) and (2) of section 294 and Part V of the Third Schedule shall apply to the Kent police authority and the members thereof as if references in the said provisions to a local authority, other than references to a parish council, were references to the Kent police authority and references to that Act were references to this Scheme.

## SECOND SCHEDULE

### *Kent police fund*

1.—(1) In respect of each financial year each contributing authority shall pay to the Kent police fund in accordance with sub-paragraphs (2) and (3) of this paragraph a contribution equal to its appropriate proportion of the net expenses of the Kent police authority in respect of that year.

(2) On the first day of each month in each financial year each contributing authority shall make a monthly interim payment into the Kent police fund on account of its contribution payable under sub-paragraph (1) of this paragraph in respect of that year of an amount equal to one-twelfth of the amount of that contribution as estimated by the Kent police authority :

Provided—

(a) that the Kent police authority may, from time to time, revise the said estimate and the monthly interim payments payable during that year after the contributing authorities have been notified of the revision shall be so increased or reduced as to adjust the difference, and

(b) that, in the event of the Kent police authority making arrangements with the Kent county council under paragraph 8 of this Scheme for the making of payments on behalf of the Kent police authority by the said council, the interim payments to be made by the said council under sub-paragraph (2) of this paragraph shall be such as may be agreed between the Kent police authority and the said council taking into account payments made by the said council on behalf of the Kent police authority, so however that such interim payments shall be sufficient at all times to enable all financial obligations of the police authority to be met.

(3) Any difference between the total of the monthly interim payments and in the case of the Kent county council the payments taken into account under proviso (b) to the last preceding sub-paragraph, made in respect of any financial year and the contribution payable in respect of that year shall be adjusted at the interim payment date next after the date on which the contribution payable in respect of that year has been ascertained, by a payment by, or a credit to, the contributing authority which has made the payments.

2. Each contributing authority shall with all convenient speed pay into the Kent police fund any income which has not been brought into account before the time of transfer and but for the operation of this Scheme would have been credited to its police account, not being income received from the investment of financial adjustment funds.

3.—(1) In this Schedule the following expressions have the meanings hereafter respectively assigned to them, that is to say :—

“ appropriate proportion ” means in the case of each contributing authority, the proportion which the aggregate rateable value of all the hereditaments in the area of the contributing authority bears to the aggregate rateable value of all the hereditaments of the Kent police area as shown in the valuation list in force at the commencement of the financial year ;

“ contributing authority ” means each of the following, namely, the Kent county council and the Canterbury county borough council ;

“ financial year ” means the period of twelve months ending on the thirty-first day of March.

(2) For the purposes of this Schedule the net expenses of the Kent police authority in respect of any financial year shall be the amount of its expenditure in respect of that year less all income (including Government grant) which is credited to the Kent police fund in respect of that year other than contributions payable under paragraph 1 of this Schedule and the said net expenses may, if the Kent police authority so resolve, include sums which the said authority think it desirable to raise, although the liability which those sums are intended to satisfy will not or may not fall due during the financial year.

### THIRD SCHEDULE

#### *Officers and servants of the Kent police authority*

1. The clerk of the Kent police authority and the treasurer of the Kent police fund shall hold office during the pleasure of the authority so however that neither of them shall be dismissed from his office without the consent of the Secretary of State :

Provided that, if such clerk be the present clerk of the standing joint committee for Kent, he shall hold office on the terms of the Local Government (Clerks) Act, 1931.

2. The offices of clerk of the Kent police authority and of treasurer of the Kent police fund shall not be held by the same person, or by persons who stand in relation to one another as partners or as employer and employee.

3. Subject to paragraph 1 above every officer and servant of the Kent police authority shall hold office during the pleasure of the authority.

4. The following provisions of the Local Government Act, 1933, namely, subsections (1), (2) and (4) of section 119, and sections 120, 121, 122 and 123 shall apply to the officers and servants of the Kent police authority as if references in those provisions to a local authority, other than references to a parish council, were references to the Kent police authority and references to that Act were references to this Scheme. [1203]

**METROPOLITAN POLICE (PENSION) REGULATIONS, 1947***S. R. & O., 1947, No. 730**April 23, 1947*

In pursuance of the power conferred upon me as the police authority for the metropolitan police force (hereinafter referred to as "the force") by section twenty-three of the Police Pensions Act, 1921, I [*i.e.* the Secretary of State], hereby make the following Regulations :—

1. In reckoning the approved service of a member of the force there shall be deducted any period of absence from duty occasioned by sickness if the chief medical officer of the force certifies that the member of the force has brought about or contributed to such sickness by his or her own default or vicious habits, unless the Commissioner of Police for special reasons decides that no deduction shall be made. [1204]

2. In reckoning the approved service of a member of the force there shall be deducted any period during which the member of the force (after due allowance has been made for any period of reinstatement with pay) has been absent from duty for seven days or longer on account of his or her suspension for misconduct. [1205]

3. In reckoning the approved service of a woman member of the force there shall be deducted any period of unpaid maternity leave and in this Regulation the expression "unpaid maternity leave" has the same meaning as in the Police (Women) Regulations. [1206]

4. These Regulations may be cited as the Metropolitan Police (Pension) Regulations, 1947. [1207]

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**SPECIAL CONSTABLES ORDER, 1947***S. R. & O., 1947, No. 1010**May 21, 1947*

Whereas by the Special Constables Act, 1914, as amended by the Special Constables Act, 1923, power is conferred on His Majesty, by Order in Council, to make Regulations with respect to the appointment and position of special constables appointed under the Special Constables Act, 1831, or under section one hundred and ninety-six of the Municipal Corporations Act, 1882, and by these Regulations to make such provisions as are mentioned in the said Special Constables Act, 1914, as so amended :

Now, therefore, His Majesty is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows :—

1. For clause (b) of subsection (2) of paragraph 11 of the Special Constables Order, 1923, as amended by the Special Constables Order (No. 2) 1945 (which clause relates to the notional rates of pay of special constables for the purpose of reckoning compensation for injuries received or illness contracted on duty), there shall be substituted the following clause :—

"(b) The pay shall be reckoned as at the rate of 105s. weekly with an addition of 1s. 6d. weekly for each completed year (other than the first two) for which the special constable has held the office since his last appointment, subject, however, to a maximum of 132s. weekly." [1208]

2. This Order may be cited as the Special Constables Order, 1947. [1209]

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# POLICE (OVERSEAS SERVICE) (GERMANY) REGULATIONS, 1947

S. R. & O., 1947, No. 1088

May 29, 1947

In pursuance of the powers conferred on me by section one of the Police (Overseas Service) Act, 1945, I, the Right Honourable Ernest Bevin, His Majesty's Principal Secretary of State for Foreign Affairs, hereby make the following Regulations :—

## PART I

### *Government and Discipline*

1. The function of the special police corps of the Control Commission for Germany (British Element) (hereafter in these Regulations referred to as "the Corps") is to perform under the control of the Secretary of State, police duties in Germany, and the Corps shall consist of those persons who are appointed to be members of it in accordance with the provisions of these Regulations or who are members of it when these Regulations come into force. [1210]

2.—(1) The members of the Corps shall be appointed by the Secretary of State and any member of the Austrian Corps transferred by the Secretary of State to the Corps shall be deemed to have been so appointed.

(2) An appointment made without any definite period of overseas service having been fixed shall operate as an appointment for a period expiring at the end of three months from the coming into force of these Regulations.

(3) A period of overseas service may, in the case of a reversionary member, of a home police force, with his consent and that of the appropriate authority, be varied.

(4) A member of the Corps may be appointed on terms which permit of his transfer to the Austrian Corps by the Secretary of State.

(5) In these Regulations "period of overseas service" means the period of overseas service for which a member of the Corps has engaged with the consent, in the case of a reversionary member of a home police force, of the appropriate authority and of the Secretary of State or, as the case may be, the period fixed by the operation of paragraph (2) above, and if such a period of overseas service has been varied under paragraph (3) above or has been varied by being terminated by discharge under the provisions of paragraph (1) or (2) of Regulation 5 means the period as so varied. [1211]

3.—(1) The Chief Officer of the Corps shall be the Inspector-General.

(2) The ranks in the Corps below that of Inspector-General shall be, in order of seniority, the following :—

- Deputy Inspector-General.
- Assistant Inspector-General.
- Deputy Assistant Inspector-General.
- Police Staff Officer Grade I.
- Police Staff Officer Grade II.
- Police Staff Officer Grade III.
- Police Staff Officer Grade IV.

(3) The number of members of the Corps to hold each rank below that of Inspector-General shall be that specified from time time time by the Secretary of State. [1212]

4.—(1) A member of the Corps may be promoted to any rank by the Secretary of State.

(2) A person may be appointed a member of the Corps with any rank.



(3) Any member of the Corps, without being promoted, may be ordered by the Inspector-General to assume for a period not exceeding three months the functions, title and insignia of a rank higher than that which he holds.

(4) A member of the Corps shall not be reduced in rank except—

(a) under the provisions of these Regulations relating to discipline, or

(b) by the Secretary of State, to a rank not lower than that which he held immediately after he was appointed a member of the Corps on the ground either that the number of members holding his rank is reduced under the provisions of paragraph (3) of Regulation 3 above or that he is unsuitable to hold his rank. [1213]

5.—(1) A member of the Corps, not being a reversionary member of a home police force, may be discharged from the Corps by the Secretary of State before the end of his period of overseas service.

(2) A member of the Corps shall be on probation for the first six months of his service as such a member and, while he is on probation, may be discharged by the Secretary of State if, in the opinion of the Inspector-General, he is not likely to be an efficient member of the Corps :

Provided that a member of the Corps who has been transferred thereto from the Austrian Corps shall not be on probation after the expiry of six months from the beginning of his period of overseas service. [1214]

6. Subject to any direction of the Secretary of State, any function of the Inspector-General may be performed, while he is absent from Germany or is incapacitated for duty or during a vacancy in that office, by such one of the Deputy Inspectors-General as may be designated either generally or for any particular purpose or on any particular occasion by the Secretary of State. [1215]

7.—(1) Every member of the Corps shall be subject to the provisions of the First Schedule hereto, which relates to discipline.

(2) A member of the Corps shall, by virtue of this paragraph and without more, be suspended during any period of penal servitude or imprisonment to which he has been sentenced by any court having jurisdiction in the United Kingdom or, unless the Inspector-General otherwise orders, during any period of detention inflicted as a punishment by a competent authority acting outside the United Kingdom. [1216]

## PART II

### *Pensions, Allowances and Gratuities*

8.—(1) There shall be paid to or in respect of persons who are or have been members of the Corps—

(a) in the case of those who immediately before ceasing to be members of the Corps were reversionary members of a home police force, such grants in respect of length of service, of death or of incapacity, and

(b) in all other cases, such grants in respect of death or incapacity by reason of infirmity of mind or body occasioned by an injury received in the execution of duty,

as are prescribed by the Second Schedule hereto.

(2) The Act of 1921 shall apply in relation to members of the Corps and persons who, after being such members, serve in a home police force or in any such capacity as is mentioned in section 10 of the Act of 1921, with the adaptations and modifications specified in the Second Schedule hereto, as if, while members of the Corps, they were members of a home police force and as if the Secretary of State were the police authority for that force. [1217]

9. All payments which are payable under the provisions of the Second Schedule hereto or under the Act of 1921 as applied by that Schedule shall, unless under the provisions of that Schedule they fall to be paid out of the police fund of a home police force, be paid out of moneys provided by Parliament. [1218]

### PART III

#### *General*

10. Any function of the Secretary of State under these Regulations may be performed by any person acting under his authorisation in that behalf. [1219]

11.—(1) In these Regulations the following expressions have the meanings hereby respectively assigned to them, that is to say :—

“ the Act ” means the Police (Overseas Service) Act, 1945 ;

“ the Act of 1921 ” means the Police Pensions Act, 1921, as amended by the Police Pensions Act, 1926 ;

“ appropriate authority ” has the same meaning as in the Act ;

“ the Austrian Corps ” means the public safety branch of the Allied Commission for Austria (British Element) ;

“ grant ” includes a pension, allowance or gratuity ;

“ home police force ” has the same meaning as in the Act ;

“ overseas service ” has the same meaning as in the Act ;

“ period of overseas service ” has the meaning assigned to it by paragraph (5) of Regulation 2 ;

“ reversion ” means reversion to a home police force in exercise of the right of reversion conferred by subsection (1) of section 2 of the Act or by that subsection as applied either by subsection (2) of section 14 of the Police Act, 1946, or by subsection (2) of section 9 of the Police (Scotland) Act, 1946 ;

“ reversionary member of a home police force ” means a member of the Corps who has been a member of a home police force and has not lost his right of reversion and includes—

(i) a person who has transferred to the Corps from being either a civil servant within the meaning of the Superannuation Act, 1887, or an officer of the staff of the metropolitan police within the meaning of the Metropolitan Police Staff (Superannuation) Act, 1875, and

(ii) in relation to grants under the Act of 1921, any person who, immediately before he ceased to be a member of the Corps, was a reversionary member.

(2) The Interpretation Act, 1889, shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament. [1220]

12.—(1) These Regulations may be cited as the Police (Overseas Service) (Germany) Regulations, 1947.

(2) These Regulations shall come into force on the first day of June, 1947. [1221]

### FIRST SCHEDULE

#### PART I

##### *Code of Offences against Discipline*

1. A member of the Corps commits an offence against discipline if he is guilty of—

(1) discreditable conduct, that is to say, if he acts in a disorderly manner or in any manner prejudicial to discipline or likely to bring discredit on the reputation of the Corps ;

- (2) insubordinate or oppressive conduct, that is to say, if he—
  - (a) is insubordinate by word, act or demeanour,
  - (b) is guilty of oppressive or tyrannical conduct towards an inferior in rank,
  - (c) uses obscene, abusive or insulting language to any other member of the Corps,
  - (d) wilfully or negligently makes any false complaint or statement against any member of the Corps,
  - (e) assaults any member of the Corps, or
  - (f) overholds any complaint or report against any member of the Corps ;
- (3) disobedience to orders, that is to say, if he disobeys or, without good and sufficient cause, omits or neglects to carry out any lawful order whether in writing or not ;
- (4) neglect of duty, that is to say, if he—
  - (a) neglects or, without good and sufficient reason, omits promptly and diligently to attend to or carry out anything which is his duty as a member of the Corps,
  - (b) by carelessness or neglect permits a prisoner to escape,
  - (c) fails, when knowing where any offender is to be found, to report the same or to make due exertions for making him amenable to justice,
  - (d) fails to report any matter which it is his duty to report,
  - (e) fails to disclose any evidence which he or any person within his knowledge can give for or against any prisoner or defendant to a criminal charge or suspect,
  - (f) omits to make any necessary entry in any official document or book, or
  - (g) while absent from duty on account of sickness is guilty of any act or conduct calculated to retard his return to duty ;
- (5) falsehood or prevarication, that is to say, if he—
  - (a) knowingly makes or signs any false statement in any official document or book,
  - (b) wilfully or negligently makes any false, misleading or inaccurate statement, or
  - (c) without good and sufficient cause destroys or mutilates any official document or record or alters or erases any entry therein ;
- (6) breach of confidence, that is to say, if he—
  - (a) divulges any matter which it is his duty to keep secret,
  - (b) gives notice directly or indirectly to any suspect that any proceedings are likely to be taken against him except in pursuance of his duty,
  - (c) without proper authority communicates to the press or to any unauthorised person any matter connected with the Corps,
  - (d) without proper authority shows to any person not a member of the Corps any book or document made or issued for the use or information of the members of the Corps,
  - (e) signs or circulates any petition or statement with regard to any matter concerning the Corps except through the proper channel of correspondence to the Inspector-General or the Secretary of State, or
  - (f) calls or attends any unauthorised meeting to discuss any matter concerning the Corps ;
- (7) corrupt practice, that is to say, if he—
  - (a) receives any bribe,
  - (b) fails to account for or to make a prompt and true return of any money or property received by him in his official capacity,
  - (c) directly or indirectly solicits or receives any gratuity, present, subscription or testimonial without the consent of the Inspector-General,
  - (d) improperly uses his character and position as a member of the Corps for his private advantage, or
  - (e) in his capacity as a member of the Corps writes, signs or gives, without the sanction of a member of the Corps not below the rank of Deputy Assistant Inspector-General, any testimonial of character or other recommendation with the object of obtaining employment for any person ;

- (8) unlawful or unnecessary exercise of authority, that is to say, if he—
  - (a) without good and sufficient cause makes any unlawful or unnecessary arrest, or
  - (b) uses any unnecessary violence to any prisoner or other person with whom he may be brought into contact in the execution of his duty ;
- (9) malingering, that is to say, if he feigns or exaggerates any sickness or injury with a view to evading duty ;
- (10) absence without leave or being late for duty, that is to say, if he, without reasonable excuse, is absent without leave from or is late for duty ;
- (11) uncleanness, that is to say, if he, while on duty or while off duty in uniform in a public place, is improperly dressed or is dirty or untidy in his person, clothing or accoutrements ;
- (12) drunkenness, that is to say, if he while on or off duty is unfit for duty through drink ;
- (13) if he lends money to any superior, or borrows from or accepts any present from any inferior in rank.

2. Any member of the Corps also commits an offence against discipline if he is convicted of any offence by any court having jurisdiction in the United Kingdom, or is convicted of any offence by any competent authority other than a disciplinary board acting outside the United Kingdom. [1222]

## PART II

### *Rules of Procedure and Punishments*

1.—(1) Where on consideration of a complaint or otherwise the Inspector-General decides that a member of the Corps should be charged with an offence against discipline he shall, as soon as possible, cause the member to be informed in writing of the charge, together with such particulars, including details as to time and place, as will leave him under no misapprehension regarding the allegations made against him.

(2) As soon as possible the accused shall be given copies of any complaints or reports relating to the charge against him.

2.—(1) The accused shall state in writing whether he admits or denies the charge, and shall be allowed to give in writing any explanation which he may wish to offer.

(2) The accused may state the names and addresses of any witnesses to material facts whom he may desire to give evidence at the hearing of the charge.

(3) The Inspector-General shall take all reasonable steps within his power to secure that any such witnesses shall be available to give evidence at the hearing of the charge.

(4) If the accused denies the charge he shall, unless the Inspector-General is satisfied with the explanation which he has offered, be ordered to appear before a disciplinary board at the hearing of the charge, and be entitled to hear the evidence given against him and to have an opportunity of cross-examining the witness and of calling witnesses in his defence.

(5) If the accused so desires he shall be entitled to have a member of the Corps selected by himself to assist him in presenting his case who shall be of a rank inferior to that of the president of the disciplinary board.

3. An offence against discipline may be punished by—

- (i) dismissal ;
- (ii) being required to retire as an alternative to dismissal ;
- (iii) reduction in rank ;
- (iv) reduction in rate of pay ;
- (v) fine ;
- (vi) reprimand ;
- (vii) caution :

Provided that—

(a) a punishment of reduction in rate of pay shall be for a period to be stated in the sentence of the disciplinary board which shall not exceed twelve months, and at the end of the stated period the member shall receive the rate of pay to which he would have been entitled but for the punishment awarded him ;

(b) a fine shall not exceed one-fifty-second of the member's annual pay.

4.—(1) The disciplinary board shall, as soon as may be after the determination by them of a charge, cause their decision to be notified in writing to the Inspector-General and to the accused.

(2) No punishment inflicted by a disciplinary board, except that of reprimand or caution, shall take effect unless confirmed by the Inspector-General.

(3) On receiving the notification of a punishment other than that of reprimand or caution, the Inspector-General may decide either to confirm the punishment or to substitute some lesser punishment.

(4) If the Inspector-General decides to confirm the punishment it shall take effect, unless he otherwise orders, from the date specified in the sentence of the disciplinary board.

(5) If the Inspector-General decides to substitute a lesser punishment, it shall take effect from such date as he orders.

5.—(1) Any member of the Corps who is punished by dismissal, requirement to retire as an alternative to dismissal, reduction in rank or reduction in rate of pay may appeal to the Secretary of State, and the Secretary of State may make rules as to the procedure on such appeals.

(2) The Secretary of State may allow such an appeal, dismiss such an appeal or vary the punishment by substituting some other punishment whether more or less severe which is set out in this Part of this Schedule.

6.—(1) A disciplinary board shall consist of three members of the Corps appointed for that purpose, whether generally or in any particular case, by the Inspector-General.

(2) The members of the board shall not be of a rank inferior to that of the accused, and that one of the members who is appointed by the Inspector-General to be president shall be of a rank superior to that of the accused :

Provided that where the accused is a Deputy Inspector-General the president and members of the board shall be persons of his own rank.

7.—(1) If the accused cannot be found or refuses or neglects to admit or deny the charge or to appear before the disciplinary board, or is serving a sentence of penal servitude or imprisonment inflicted by a court having jurisdiction in the United Kingdom, or is undergoing detention inflicted as a punishment by a competent authority acting outside the United Kingdom, he shall be deemed to have denied the charge.

(2) In the circumstances described in sub-paragraph (1) of this paragraph the Inspector-General shall cause such steps to be taken as may be reasonably practicable to carry out as near as may be the disciplinary procedure set out in paragraphs 1 and 2 of this Part of this Schedule but, subject to the foregoing provisions of this sub-paragraph, the case may be decided in the absence of the accused.

8. If on consideration of a complaint or otherwise the Secretary of State decides that the Inspector-General should be charged with an offence against discipline, the procedure shall be such as the Secretary of State may direct, except that paragraph 5 above shall apply. [1223]

### PART III

#### *Provisions as to Suspension*

1. The Inspector-General, if it appears to him that an offence against discipline or a criminal offence may have been committed by a member of the Corps, may suspend that member from duty.

2. Where a member of the Corps is suspended from duty under this Part of this Schedule on the ground of absence from duty, the period of suspension shall, if the Inspector-General so directs, begin with the date which appears to him to be the date on which that offence had been committed, and where the absence from duty is combined with absence from Germany may, if he so directs, begin with the date on which, in his opinion, the member should have commenced to return to Germany.

3. Where a member of the Corps is suspended from duty under this Part of this Schedule the period of suspension shall, unless previously brought to an end by the Inspector-General, continue until disciplinary proceedings in respect of that

offence have been concluded or until he has decided that such proceedings shall not be taken or shall be discontinued.

4. The Inspector-General may delegate all or any of his powers under this Part of this Schedule to any member or members of the Corps of a rank not lower than that of Deputy Assistant Inspector-General. [1224]

## SECOND SCHEDULE

### *Pensions, Allowances and Gratuities*

1.—(1) The following provisions of the Act of 1921, namely, section 1, subsections (2), (3) and (4) of section 2, section 6, subsection (3) of section 8, paragraph (iii) of subsection (1) of section 10 and sections 22, 27, 30 and 32, shall not apply to the Corps or to service therein.

(2) The following provisions of the Act of 1921, namely, paragraphs (a), (b) and (d) of subsection (1) of section 2, paragraphs (a) and (c) of section 3, paragraphs (a) and (c) of section 4 (except the provisions of the last-mentioned paragraphs which deal with death from the effects of an injury received in the execution of duty), subsections (1) and (2) of section 8, section 9 and paragraphs (i), (ii) and (iv) of subsection (1) and section (2) of section 10, shall not apply to service in the Corps other than service as a reversionary member of a home police force.

2.—(1) Where a member of the Corps is transferred thereto from the Austrian Corps, for the purposes of any right in respect of a grant or the repayment of rateable deductions, the Austrian Corps shall be treated as though it were part of the Corps.

(2) Where a member of the Corps is transferred to the Austrian Corps any rights or obligations of his or in respect of him under Part II of these Regulations or this Schedule shall cease and be replaced by such rights and obligations as may be conferred or imposed upon or in respect of him by any Regulations relating to the Austrian Corps made under subsections (2) and (3) of section 1 of the Act.

3.—(1) Where a member of the Corps leaves the Corps without claiming to be entitled to a pension under paragraph (c) of subsection (1) of section 2 of the Act of 1921 and it is claimed afterwards that he is disabled by infirmity of mind or body occasioned by an injury received in the execution of his duty as a member of the Corps without his own default or has died from the effects of an injury so received without his own default and such claim is established, there shall be payable, subject to the succeeding provisions of this paragraph, the same pension to him as if, while still a member of the Corps, he had been incapacitated for the performance of his duty by infirmity of mind or body occasioned by such an injury and the same grants to his widow, children and dependants as if he had died from the effects of such an injury after being granted a pension in respect of it.

(2) A grant under sub-paragraph (1) shall be based on the approved service which the member was entitled to reckon when he left the Corps and his rank and annual pay at that date, but shall be payable, where the right is in respect of death, as from the time of death and, where the right is in respect of permanent disablement, as from the time of the disablement or, where that time cannot be ascertained, from the time when the claim is made to the Secretary of State.

(3) A claim under sub-paragraph (1) shall not affect the right to any other grant or any repayment of rateable deductions under the Act of 1921 unless and until the said claim is established, and thereupon the said right shall cease.

(4) Any payment of a grant or repayment of rateable deductions which has been made and the right to which has ceased under sub-paragraph (3) shall be irrecoverable.

(5) Any payment of a pension or allowance to a person whose right to it has ceased under sub-paragraph (3) which is made after the time from which a pension or allowance under sub-paragraph (1) becomes payable to that person shall be treated as a payment on account of the latter pension or allowance.

(6) Any payment of a gratuity or repayment of rateable deductions which, under sub-paragraph (4), has become irrecoverable, shall be treated as a payment on account of any grant payable under sub-paragraph (1) to the person to whom the irrecoverable payment or repayment was made except where an irrecoverable gratuity was paid under those provisions of the Act of 1921 which are mentioned below, in which case it shall be treated as such a payment on account only to the



extent by which it exceeds the sum of the payments that would have been made if the person to whom it was paid had been in receipt—

- (i) where the irrecoverable gratuity was paid under paragraph (d) of subsection (1) of section 2 of the Act of 1921, of a pension at a rate equal to a sixtieth of his annual pay for each year of approved service ;
- (ii) where the irrecoverable gratuity was paid under paragraph (c) of section 3 of the Act of 1921, of a widow's ordinary pension on scale (i) in paragraph 6 of the First Schedule to the Act of 1921 ;
- (iii) where the irrecoverable gratuity was paid under paragraph (d) of section 3 or paragraph (b) of section 4 of the Act of 1921, of the pension or allowance that would have been paid if the irrecoverable gratuity had not been granted.

(7) Where a member of the Corps serves in a home police force after leaving the Corps and a right to a grant under sub-paragraph (1) to or in respect of him is established, the police authority of that force shall pay to the Secretary of State any grant or any rateable deductions which they would have been liable to pay or repay after the date when the right is so established if the right to them had not ceased under sub-paragraph (3).

(8) In determining a claim under sub-paragraph (1) infirmity shall be deemed to be occasioned by, or a death to be due to, the effects of an injury, notwithstanding that events after leaving the Corps have aggravated the effects of the injury.

4. References in the Act of 1921 to a Chief Officer of Police shall have effect in relation to the Corps as references to the Inspector-General.

5.—(1) A reversionary member of a home police force shall not be entitled to retire from the Corps under paragraph (a) of subsection (1) of section 2 of the Act of 1921 at a date earlier than the date of the conclusion of his period of overseas service.

(2) A reversionary member of a home police force who, on or before the date of the conclusion of his period of overseas service, attains the age of sixty, but on that date will not have or has not completed twenty-five years' approved service, shall be entitled, on giving to the Secretary of State notice of his intention so to do, to retire on the said date and receive such ordinary pension or gratuity as he would have been entitled to receive had he retired on that date on a medical certificate.

6.—(1) Subsection (1) of section 8 of the Act of 1921 shall have effect in relation to the engagement of a member of a home police force, with the consent of the appropriate authority and of the Secretary of State, as a member of the Corps, and to his reversion under either subsection (1) of section 2 of the Act or that subsection as applied either by subsection (2) of section 14 of the Police Act, 1946, or by subsection (2) of section 9 of the Police (Scotland) Act, 1946, as if such engagement and reversion were removals with the sanction described in the said subsection (1) of section 8.

(2) A reversionary member of a home police force shall not be deemed to have removed from the Corps within the meaning of subsection (1) of section 8 of the Act of 1921 to a police force other than the force to which he has a right of reversion unless he has obtained the written sanction of the appropriate authority to such removal.

(3) Subsection (2) of section 8 of the Act of 1921 shall have effect as if any payment by a police authority to the Secretary of State under sub-paragraph (7) of paragraph 3 of this Schedule were a grant referred to in the said subsection.

7.—(1) Section 12 of the Act of 1921 shall not apply to a member of the Corps.

(2) A member of the Corps or a person who has been such a member shall not be entitled to a pension or gratuity in respect of incapacity unless—

- (i) either he obtains a certificate under sub-paragraph (5) (i) and (ii) of this paragraph or it is deemed under sub-paragraph (9) of this paragraph that he is disabled and that the disablement is likely to become permanent ; and
- (ii) where the claim is for a special pension he obtains a certificate under sub-paragraph (5) (iii), (iv) and (v) of this paragraph.

(3) If a member of the Corps claims to be entitled to receive a grant under paragraph (b), (c) or (d) of subsection (1) of section 2 of the Act of 1921 or under



sub-paragraph (1) of paragraph 3 of this Schedule, the Secretary of State shall appoint a qualified medical practitioner to examine him.

(4) The Inspector-General shall give the appointed medical practitioner all necessary information as to the claimant's history and, where the claimant is still a member of the Corps, as to what his future duties would be if he remains such a member.

(5) After examining the claimant and considering all relevant information the appointed medical practitioner—

- (i) if he is satisfied that the claimant is incapacitated for the performance of his duty by infirmity of mind or body, shall so certify, and
- (ii) if he is satisfied that the incapacity is likely to be permanent, shall so certify :

where the appointed medical practitioner certifies as in (ii) above or it is deemed under sub-paragraph (9) of this paragraph that the claimant is disabled and that his disablement is likely to be permanent, the appointed medical practitioner—

- (iii) if he is satisfied that the infirmity producing the incapacity or disablement was occasioned by the causes alleged by the claimant, shall so certify,
- (iv) if he is satisfied that the injury occasioning the infirmity was received without the claimant's own default, shall so certify, and
- (v) shall certify the degree of incapacity or disablement.

(6) A copy of the certificate under sub-paragraph (5) shall be given to the claimant.

(7) If the claimant is dissatisfied with the certificate of the appointed medical practitioner and, within twenty-one days of the receipt by the claimant of the copy of the certificate, applies to the Secretary of State to appoint a medical referee, the Secretary of State shall appoint a medical referee.

(8) The medical referee after examining the claimant and considering all relevant information, whether or not it was information available to the appointed medical practitioner, shall issue whatever certificate under sub-paragraph (5) of this paragraph would be in his opinion proper.

(9) Where a person who after leaving the Corps and serving in a home police force and having been given by the police authority of that force a grant under paragraph (b), (c) or (d) of subsection (1) of section 2 of the Act of 1921 claims a pension under sub-paragraph (1) of paragraph 3 of this Schedule, it shall be deemed that he is disabled and that the disablement is likely to be permanent.

(10) The decision of an appointed medical practitioner to certify or to refuse to certify under sub-paragraph (5) of this paragraph shall, unless there is an appeal to a medical referee, be final on all questions within his consideration under the said sub-paragraph.

(11) The decision of the medical referee to certify or to refuse to certify under sub-paragraph (5) of this paragraph shall, unless a claim is referred to him by an appeal tribunal, be final on all questions within his consideration under the said sub-paragraph, and his decision on such a reference shall, subject to any further reference, be final.

(12) Where a person is in receipt of a special pension granted to him by the Secretary of State, the Secretary of State may, as often as he thinks it desirable within five years of the date of the grant of the pension, require him to be examined by an appointed medical practitioner and, on such requirement, sub-paragraphs (5), (6), (7) and (8) of this paragraph shall apply.

(13) The Secretary of State on receipt of the certificate of the appointed medical practitioner or, as the case may be, of the medical referee under sub-paragraph (12) above may, if the pensioner's degree of disablement has altered, reassess the amount of the pension accordingly subject to the limits prescribed by paragraph 4 of the First Schedule to the Act of 1921 and, if the pensioner's incapacity has permanently ceased, reduce the pension of a reversionary member of a home police force to the pension that would have been payable to him on Scale No. 6 in the Table subjoined to Part I of the First Schedule to the Act of 1921 and may end the pension of any other person.

(14) If a claimant or, as the case may be, a pensioner refuses or wilfully or negligently fails to submit himself for examination by an appointed medical practitioner or a medical referee under this paragraph or refuses or wilfully or negligently fails in connection with such examination to supply the practitioner or referee with

any information, the Secretary of State may deal with him in all respects as if certificates under sub-paragraphs (5) and (8) of this paragraph of such a nature as the Secretary of State may determine had been issued.

8.—(1) Subsection (1) of section 17 of the Act of 1921 shall not apply to a grant payable or claimed to be payable by the Secretary of State under these Regulations.

(2) Where—

- (a) a pension or allowance granted by the Secretary of State under these Regulations is subsequently, in pursuance of the Act of 1921 as applied by these Regulations, declared by him to have been forfeited,
- (b) any person claims as of right from the Secretary of State a grant under these Regulations and the Secretary of State does not admit the claim, or
- (c) any person claims as of right from the Secretary of State a grant under these Regulations larger than that granted to that person,

the person aggrieved may apply to the Secretary of State for a reconsideration of the case and, if aggrieved by his decision upon such reconsideration, may appeal to an appeal tribunal.

(3) An appeal tribunal shall be appointed by the Secretary of State if any person notifies him of his desire to appeal to such a tribunal under sub-paragraph (2) and may be appointed either to hear all appeals under the said sub-paragraph or to hear any particular appeal or class or description of appeal.

(4) An appeal tribunal shall consist of three members who are respectively a barrister, advocate or solicitor of not less than seven years' standing, a duly qualified medical practitioner of not less than seven years' standing and a retired member of the Corps, of the Austrian Corps or of a home police force who either held a rank in the Corps or the Austrian Corps not lower than that of Deputy Assistant Inspector-General or held a rank in the force not lower than that of superintendent.

(5) If the appeal tribunal decide that the evidence before the appointed medical practitioner or, if there has been an appeal to a medical referee, before that referee was inaccurate or inadequate, they may refer the matter again to the practitioner or, as the case may be, the referee to consider the matter again and issue any amended certificate he thinks proper.

(6) Subject to any general or special directions of the Secretary of State an appeal tribunal shall determine its own procedure.

(7) The provisions of subsection (2) of section 17 of the Act of 1921 shall have effect in relation to any decision of an appeal tribunal with the substitution for references to quarter sessions of references to the appeal tribunal.

9.—(1) Section 18 of the Act of 1921 shall not apply to a person in receipt of a pension granted by the Secretary of State under these Regulations.

(2) Where a person in receipt of a pension granted by the Secretary of State under these Regulations takes service in any police force other than as a member of the first class of the police reserve or as an ex-member of a police force who joins a force for service in an emergency, the said pension shall cease forthwith and all rights in respect of that person to a grant shall cease.

(3) Where a person who was in receipt of a special pension which has ceased under the provisions of sub-paragraph (2) above subsequently becomes incapacitated for the performance of his duty or dies, his rights under the Act of 1921 and the rights of any other person in respect of him under that Act against the police authority of any force of which he was a member after ceasing to be a member of the Corps shall be determined as if the injury on account of which he received the special pension which has ceased had been received otherwise than in the execution of his duty.

10. The references in subsection (3) of section 29 and in section 31 of the Act of 1921 to the provisions of that Act shall have effect in relation to the Corps and service in the Corps as references to the provisions of that Act as applied by these Regulations.

11.—(1) For the purposes of paragraphs 6 and 10 of the First Schedule to the Act of 1921 the ranks of Police Staff Officer Grade III and Police Staff Officer Grade IV shall be deemed to be the rank of inspector, and all higher ranks in the Corps shall be deemed to be ranks higher than that of inspector.

(2) For the purpose of proviso (i) to sub-paragraph (a) of paragraph 20 of the First Schedule to the Act of 1921 an appointment to the Corps shall, in the case of a reversionary member of a home police force, be deemed to be a promotion.

(3) Sub-paragraph (b) of the said paragraph 20 shall not apply to the Corps.

12. In this Schedule the expression "disabled" means disabled by infirmity of mind or body to such an extent as would incapacitate a member of the Corps for the performance of his duty, and "disablement" has a corresponding meaning. [1225]

## POLICE (OVERSEAS SERVICE) (AUSTRIA) REGULATIONS, 1947

S. R. & O., 1947, No. 1188

June 8, 1947

In pursuance of the powers conferred on me by section one of the Police (Overseas Service) Act, 1945, I, the Right Honourable Ernest Bevin, His Majesty's Principal Secretary of State for Foreign Affairs, hereby make the following Regulations :—

### PART I

#### *Government and Discipline*

1. The function of the public safety branch of the Allied Commission for Austria (British Element) (hereafter in these Regulations referred to as "the Corps") is to perform, under the control of the Secretary of State, police duties in Austria, and the Corps shall consist of those persons who are appointed to be members of it in accordance with the provisions of these Regulations or who are members of it when these Regulations come into force. [1226]

2.—(1) The members of the Corps shall be appointed by the Secretary of State and any member of the German Corps transferred by the Secretary of State to the Corps shall be deemed to have been so appointed.

(2) An appointment made without any definite period of overseas service having been fixed shall operate as an appointment for a period expiring at the end of three months from the coming into force of these Regulations.

(3) A period of overseas service may, in the case of a reversionary member of a home police force, with his consent and that of the appropriate authority, be varied.

(4) A member of the Corps may be appointed on terms which permit of his transfer to the German Corps by the Secretary of State.

(5) In these Regulations "period of overseas service" means the period of overseas service for which a member of the Corps has engaged with the consent, in the case of a reversionary member of a home police force, of the appropriate authority and of the Secretary of State or, as the case may be, the period fixed by the operation of paragraph (2), and if such period of overseas service has been varied under paragraph (3) or has been varied by being terminated by discharge under the provisions of paragraph (1) or (2) of Regulation 5 means the period as so varied. [1227]

3.—(1) There shall be a Chief Officer of the Corps who shall, unless the Secretary of State otherwise directs, be denominated the Inspector-General.

(2) The ranks in the Corps may include, in order of seniority, the following :—

- Deputy Inspector-General.
- Assistant Inspector-General.
- Deputy Assistant Inspector-General.
- Police Staff Officer Grade I.
- Police Staff Officer Grade II.
- Police Staff Officer Grade III.

(3) The number of members of the Corps to hold each rank shall be that specified from time to time by the Secretary of State. [1228]

4.—(1) A member of the Corps may be promoted to any rank by the Secretary of State.

(2) A person may be appointed a member of the Corps with any rank.

(3) Any member of the Corps, without being promoted, may be ordered by the Chief Officer to assume for a period not exceeding three months the functions, title and insignia of a rank higher than that which he holds.

(4) A member of the Corps shall not be reduced in rank except—

- (a) under the provisions of these Regulations relating to discipline, or
- (b) by the Secretary of State, to a rank not lower than that which he held immediately after he was appointed a member of the Corps on the ground either that the number of members holding his rank is reduced under the provisions of paragraph (3) of Regulation 3 above or that he is unsuitable to hold his rank. [1229]

5.—(1) A member of the Corps, not being a reversionary member of a home police force, may be discharged from the Corps by the Secretary of State before the end of his period of overseas service.

(2) A member of the Corps shall be on probation for the first six months of his service as such a member and, while he is on probation, may be discharged by the Secretary of State if, in the opinion of the Chief Officer, he is not likely to be an efficient member of the Corps :

Provided that a member of the Corps who has been transferred thereto from the German Corps shall not be on probation after the expiry of six months from the beginning of his period of overseas service. [1230]

6. Subject to any direction of the Secretary of State, any function of the Chief Officer may be performed, while he is absent from Austria or is incapacitated for duty or during a vacancy in that office, by such one of the members of the Corps holding the senior rank as may be designated either generally or for any particular purpose or on any particular occasion by the Secretary of State. [1231]

7.—(1) Every member of the Corps shall be subject to the provisions of the First Schedule hereto, which relates to discipline.

(2) A member of the Corps shall, by virtue of this paragraph and without more, be suspended during any period of penal servitude or imprisonment to which he has been sentenced by any court having jurisdiction in the United Kingdom or, unless the Chief Officer otherwise orders, during any period of detention inflicted as a punishment by a competent authority acting outside the United Kingdom. [1232]

## PART II

### *Pensions, Allowances and Gratuities*

8.—(1) There shall be paid to or in respect of persons who are or have been members of the Corps—

- (a) in the case of those who immediately before ceasing to be members of the Corps were reversionary members of a home police force, such grants in respect of length of service, of death or of incapacity, and
- (b) in all other cases, such grants in respect of death or incapacity by reason of infirmity of mind or body occasioned by an injury received in the execution of duty,

as are prescribed by the Second Schedule hereto.

(2) The Act of 1921 shall apply in relation to members of the Corps

and persons who, after being such members, serve in a home police force or in any such capacity as is mentioned in section 10 of the Act of 1921, with the adaptations and modifications specified in the Second Schedule hereto, as if, while members of the Corps, they were members of a home police force and as if the Secretary of State were the police authority for that force. [1233]

9. All payments which are payable under the provisions of the Second Schedule hereto or under the Act of 1921 as applied by that Schedule shall, unless under the provisions of that Schedule they fall to be paid out of the police fund of a home police force, be paid out of moneys provided by Parliament. [1234]

### PART III

#### *General*

10. Any function of the Secretary of State under these Regulations may be performed by any person acting under his authorisation in that behalf. [1235]

11.—(1) In these Regulations the following expressions have the meanings hereby respectively assigned to them, that is to say :—

“ the Act ” means the Police (Overseas Service) Act, 1945 ;

“ the Act of 1921 ” means the Police Pensions Act, 1921, as amended by the Police Pensions Act, 1926 ;

“ appropriate authority ” has the same meaning as in the Act ;

“ the German Corps ” means the special police corps of the Control Commission for Germany (British Element) ;

“ grant ” includes a pension, allowance or gratuity ;

“ home police force ” has the same meaning as in the Act ;

“ overseas service ” has the same meaning as in the Act ;

“ period of overseas service ” has the meaning assigned to it by paragraph (5) of Regulation 2 ;

“ reversion ” means reversion to a home police force in exercise of the right of reversion conferred by subsection (1) of section 2 of the Act or by that subsection as applied either by subsection (2) of section 14 of the Police Act, 1946, or by subsection (2) of section 9 of the Police (Scotland) Act, 1946 ;

“ reversionary member of a home police force ” means a member of the Corps who has been a member of a home police force and has not lost his right of reversion and includes—

(i) a person who has transferred to the Corps from being either a civil servant within the meaning of the Superannuation Act, 1887, or an officer of the staff of the metropolitan police within the meaning of the Metropolitan Police Staff (Superannuation) Act, 1875, and

(ii) in relation to grants under the Act of 1921, any person who, immediately before he ceased to be a member of the Corps, was a reversionary member.

(2) The Interpretation Act, 1889, shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament. [1236]

12.—(1) These Regulations may be cited as the Police (Overseas) Service (Austria) Regulations, 1947.

(2) These Regulations shall come into force on the ninth day of June, 1947. [1237]

*Note.*—There is a slight discrepancy between the title as it appears here and in the heading to the regulations.

## FIRST SCHEDULE

## PART I

*Code of Offences against Discipline*

1. A member of the Corps commits an offence against discipline if he is guilty of—

- (1) discreditable conduct, that is to say, if he acts in a disorderly manner or in any manner prejudicial to discipline or likely to bring discredit on the reputation of the Corps ;
- (2) insubordinate or oppressive conduct, that is to say, if he—
  - (a) is insubordinate by word, act or demeanour,
  - (b) is guilty of oppressive or tyrannical conduct towards an inferior in rank,
  - (c) uses obscene, abusive or insulting language to any other member of the Corps,
  - (d) wilfully or negligently makes any false complaint or statement against any member of the Corps,
  - (e) assaults any member of the Corps, or
  - (f) overholds any complaint or report against any member of the Corps ;
- (3) disobedience to orders, that is to say, if he disobeys or, without good and sufficient cause, omits or neglects to carry out any lawful order whether in writing or not ;
- (4) neglect of duty, that is to say, if he—
  - (a) neglects or, without good and sufficient reason, omits promptly and diligently to attend to or carry out anything which is his duty as a member of the Corps,
  - (b) by carelessness or neglect permits a prisoner to escape,
  - (c) fails, when knowing where any offender is to be found, to report the same or to make due exertions for making him amenable to justice,
  - (d) fails to report any matter which it is his duty to report,
  - (e) fails to disclose any evidence which he or any person within his knowledge can give for or against any prisoner or defendant to a criminal charge or suspect,
  - (f) omits to make any necessary entry in any official document or book, or
  - (g) while absent from duty on account of sickness is guilty of any act or conduct calculated to retard his return to duty ;
- (5) falsehood or prevarication, that is to say, if he—
  - (a) knowingly makes or signs any false statement in any official document or book,
  - (b) wilfully or negligently makes any false, misleading or inaccurate statement, or
  - (c) without good and sufficient cause destroys or mutilates any official document or record or alters or erases any entry therein ;
- (6) breach of confidence, that is to say, if he—
  - (a) divulges any matter which it is his duty to keep secret,
  - (b) gives notice directly or indirectly to any suspect that any proceedings are likely to be taken against him except in pursuance of his duty,
  - (c) without proper authority communicates to the press or to any unauthorised person any matter connected with the Corps,
  - (d) without proper authority shows to any person not a member of the Corps any book or document made or issued for the use or information of the members of the Corps,
  - (e) signs or circulates any petition or statement with regard to any matter concerning the Corps except through the proper channel of correspondence to the Chief Officer or the Secretary of State, or
  - (f) calls or attends any unauthorised meeting to discuss any matter concerning the Corps ;



- (7) corrupt practice, that is to say, if he—
- (a) receives any bribe,
  - (b) fails to account for or to make a prompt and true return of any money or property received by him in his official capacity,
  - (c) directly or indirectly solicits or receives any gratuity, present, subscription or testimonial without the consent of the Chief Officer,
  - (d) improperly uses his character and position as a member of the Corps for his private advantage, or
  - (e) in his capacity as a member of the Corps writes, signs or gives, without the sanction of the Chief Officer, any testimonial of character or other recommendation with the object of obtaining employment for any person ;
- (8) unlawful or unnecessary exercise of authority, that is to say, if he—
- (a) without good and sufficient cause makes any unlawful or unnecessary arrest, or
  - (b) uses any unnecessary violence to any prisoner or other person with whom he may be brought into contact in the execution of his duty ;
- (9) malingering, that is to say, if he feigns or exaggerates any sickness or injury with a view to evading duty ;
- (10) absence without leave or being late for duty, that is to say, if he, without reasonable excuse, is absent without leave from or is late for duty ;
- (11) uncleanness, that is to say, if he, while on duty or while off duty in uniform in a public place, is improperly dressed or is dirty or untidy in his person, clothing or accoutrements ;
- (12) drunkenness, that is to say, if he while on or off duty is unfit for duty through drink ;
- (13) if he lends money to any superior, or borrows from or accepts any present from any inferior in rank.

2. Any member of the Corps also commits an offence against discipline if he is convicted of any offence by any court having jurisdiction in the United Kingdom, or is convicted of any offence by any competent authority other than a disciplinary board acting outside the United Kingdom. [1238]

## PART II

### *Rules of Procedure and Punishments*

1.—(1) Where on consideration of a complaint or otherwise the Chief Officer decides that a member of the Corps should be charged with an offence against discipline he shall, as soon as possible, cause the member to be informed in writing of the charge, together with such particulars, including details as to time and place, as will leave him under no misapprehension regarding the allegations made against him.

(2) As soon as possible the accused shall be given copies of any complaints or reports relating to the charge against him.

2.—(1) The accused shall state in writing whether he admits or denies the charge, and shall be allowed to give in writing any explanation which he may wish to offer.

(2) The accused may state the names and addresses of any witnesses to material facts whom he may desire to give evidence at the hearing of the charge.

(3) The Chief Officer shall take all reasonable steps within his power to secure that any such witnesses shall be available to give evidence at the hearing of the charge.

(4) If the accused denies the charge he shall, unless the Chief Officer is satisfied with the explanation which he has offered, be ordered to appear before a disciplinary board at the hearing of the charge, and be entitled to hear the evidence given against him and to have an opportunity of cross-examining the witnesses and of calling witnesses in his defence.

(5) If the accused so desires he shall be entitled to have a member of the Corps selected by himself to assist him in presenting his case who shall be of a rank inferior to that of the president of the disciplinary board.



3. An offence against discipline may be punished by—

- (i) dismissal ;
- (ii) being required to retire as an alternative to dismissal ;
- (iii) reduction in rank ;
- (iv) reduction in rate of pay ;
- (v) fine ;
- (vi) reprimand ;
- (vii) caution :

Provided that—

(a) a punishment of reduction in rate of pay shall be for a period to be stated in the sentence of the disciplinary board which shall not exceed twelve months, and at the end of the stated period the member shall receive the rate of pay to which he would have been entitled but for the punishment awarded him ;

(b) a fine shall not exceed one-fifty-second of the member's annual pay.

4.—(1) The disciplinary board shall, as soon as may be after the determination by them of a charge, cause their decision to be notified in writing to the Chief Officer and to the accused.

(2) No punishment inflicted by a disciplinary board, except that of reprimand or caution, shall take effect unless confirmed by the Chief Officer.

(3) On receiving the notification of a punishment other than that of reprimand or caution, the Chief Officer may decide either to confirm the punishment or to substitute some lesser punishment.

(4) If the Chief Officer decides to confirm the punishment it shall take effect, unless he otherwise orders, from the date specified in the sentence of the disciplinary board.

(5) If the Chief Officer decides to substitute a lesser punishment, it shall take effect from such date as he orders.

5.—(1) Any member of the Corps who is punished by dismissal, requirement to retire as an alternative to dismissal, reduction in rank or reduction in rate of pay may appeal to the Secretary of State, and the Secretary of State may make rules as to the procedure on such appeals.

(2) The Secretary of State may allow such an appeal, dismiss such an appeal or vary the punishment by substituting some other punishment whether more or less severe which is set out in this Part of this Schedule.

6.—(1) A disciplinary board shall consist of three members appointed for that purpose, whether generally or in any particular case, by the Chief Officer.

(2) The Board shall consist of members of the Corps of a rank not inferior to that of the accused, and that one of the members who is appointed by the Chief Officer to be president shall be of a rank superior to that of the accused :

Provided that where by reason of the high rank of the accused it is not possible to appoint a board of equal rank and a president of senior rank, the board shall be composed of such persons including persons not members of the Corps as the Chief Officer with the consent of the Secretary of State may appoint.

7.—(1) If the accused cannot be found or refuses or neglects to admit or deny the charge or to appear before the disciplinary board, or is serving a sentence of penal servitude or imprisonment inflicted by a court having jurisdiction in the United Kingdom, or is undergoing detention inflicted as a punishment by a competent authority acting outside the United Kingdom, he shall be deemed to have denied the charge.

(2) In the circumstances described in sub-paragraph (1) of this paragraph the Chief Officer shall cause such steps to be taken as may be reasonably practicable to carry out as near as may be the disciplinary procedure set out in paragraphs 1 and 2 of this Part of this Schedule but, subject to the foregoing provisions of this sub-paragraph, the case may be decided in the absence of the accused.

8. If on consideration of a complaint or otherwise the Secretary of State decides that the Chief Officer should be charged with an offence against discipline, the procedure shall be such as the Secretary of State may direct, except that paragraph 5 above shall apply. [1239]

## PART III

*Provisions as to Suspension*

1. The Chief Officer, if it appears to him that an offence against discipline or a criminal offence may have been committed by a member of the Corps, may suspend that member from duty.

2. Where a member of the Corps is suspended from duty under this Part of this Schedule on the ground of absence from duty, the period of suspension shall, if the Chief Officer so directs, begin with the date which appears to him to be the date on which that offence had been committed, and where the absence from duty is combined with absence from Austria may, if he so directs, begin with the date on which, in his opinion, the member should have commenced to return to Austria.

3. Where a member of the Corps is suspended from duty under this Part of this Schedule the period of suspension shall, unless previously brought to an end by the Chief Officer, continue until disciplinary proceedings in respect of that offence have been concluded or until he has decided that such proceedings shall not be taken or shall be discontinued.

4. The Chief Officer may delegate all or any of his powers under this Part of this Schedule to any member or members of the Corps of a rank not lower than that of Deputy Assistant Inspector-General. [1240]

## SECOND SCHEDULE

*Pensions, Allowances and Gratuities*

1.—(1) The following provisions of the Act of 1921, namely, section 1, subsections (2), (3) and (4) of section 2, section 6, subsection (3) of section 8, paragraph (iii) of subsection (1) of section 10 and sections 22, 27, 30 and 32, shall not apply to the Corps or to service therein.

(2) The following provisions of the Act of 1921, namely, paragraphs (a), (b) and (d) of subsection (1) of section 2, paragraphs (a) and (c) of section 3, paragraphs (a) and (c) of section 4 (except the provisions of the last-mentioned paragraphs which deal with death from the effects of an injury received in the execution of duty), subsections (1) and (2) of section 8, section 9 and paragraphs (i), (ii) and (iv) of subsection (1) and subsection (2) of section 10, shall not apply to service in the Corps other than service as a reversionary member of a home police force.

2.—(1) Where a member of the Corps is transferred thereto from the German Corps, for the purposes of any right in respect of a grant or the repayment of rateable deductions, the German Corps shall be treated as though it were part of the Corps.

(2) Where a member of the Corps is transferred to the German Corps any rights or obligations of his or in respect of him under Part II of these Regulations or this Schedule shall cease and be replaced by such rights and obligations as may be conferred or imposed upon or in respect of him by any Regulations relating to the German Corps made under subsections (2) and (3) of section 1 of the Act.

3.—(1) Where a member of the Corps leaves the Corps without claiming to be entitled to a pension under paragraph (c) of subsection (1) of section 2 of the Act of 1921 and it is claimed afterwards that he is disabled by infirmity of mind or body occasioned by an injury received in the execution of his duty as a member of the Corps without his own default or has died from the effects of any injury so received without his own default and such claim is established, there shall be payable, subject to the succeeding provisions of this paragraph, the same pension to him as if, while still a member of the Corps, he had been incapacitated for the performance of his duty by infirmity of mind or body occasioned by such an injury and the same grants to his widow, children and dependants as if he had died from the effects of such an injury after being granted a pension in respect of it.

(2) A grant under sub-paragraph (1) shall be based on the approved service which the member was entitled to reckon when he left the Corps and his rank and annual pay at that date, but shall be payable, where the right is in respect of death, as from the time of death and, where the right is in respect of permanent disablement, as from the time of the disablement or, where that time cannot be ascertained, from the time when the claim is made to the Secretary of State.

(3) A claim under sub-paragraph (1) shall not affect the right to any other grant or any repayment of rateable deductions under the Act of 1921 unless and until the said claim is established, and thereupon the said right shall cease.

(4) Any payment of a grant or repayment of rateable deductions which has been made and the right to which has ceased under sub-paragraph (3) shall be irrecoverable.

(5) Any payment of a pension or allowance to a person whose right to it has ceased under sub-paragraph (3) which is made after the time from which a pension or allowance under sub-paragraph (1) becomes payable to that person shall be treated as a payment on account of the latter pension or allowance.

(6) Any payment of a gratuity or repayment of rateable deductions which, under sub-paragraph (4), has become irrecoverable, shall be treated as a payment on account of any grant payable under sub-paragraph (1) to the person to whom the irrecoverable payment or repayment was made except where an irrecoverable gratuity was paid under those provisions of the Act of 1921 which are mentioned below, in which case it shall be treated as such a payment on account only to the extent by which it exceeds the sum of the payments that would have been made if the person to whom it was paid had been in receipt—

- (i) where the irrecoverable gratuity was paid under paragraph (d) of subsection (1) of section 2 of the Act of 1921, of a pension at a rate equal to a sixtieth of his annual pay for each year of approved service ;
- (ii) where the irrecoverable gratuity was paid under paragraph (c) of section 3 of the Act of 1921, of a widow's ordinary pension on scale (i) in paragraph 6 of the First Schedule to the Act of 1921 ;
- (iii) where the irrecoverable gratuity was paid under paragraph (d) of section 3 or paragraph (b) of section 4 of the Act of 1921, of the pension or allowance that would have been paid if the irrecoverable gratuity had not been granted.

(7) Where a member of the Corps serves in a home police force after leaving the Corps and a right to a grant under sub-paragraph (1) to or in respect of him is established, the police authority of that force shall pay to the Secretary of State any grant or any rateable deductions which they would have been liable to pay or repay after the date when the right is so established if the right to them had not ceased under sub-paragraph (3).

(8) In determining a claim under sub-paragraph (1) infirmity shall be deemed to be occasioned by, or a death to be due to, the effects of an injury, notwithstanding that events after leaving the Corps have aggravated the effects of the injury.

4. References in the Act of 1921 to a Chief Officer of Police shall have effect in relation to the Corps as references to the Chief Officer.

5.—(1) A reversionary member of a home police force shall not be entitled to retire from the Corps under paragraph (a) of subsection (1) of section 2 of the Act of 1921 at a date earlier than the date of the conclusion of his period of overseas service.

(2) A reversionary member of a home police force who, on or before the date of the conclusion of his period of overseas service, attains the age of sixty, but on that date will not have or has not completed twenty-five years' approved service, shall be entitled, on giving to the Secretary of State notice of his intention so to do, to retire on the said date and receive such ordinary pension or gratuity as he would have been entitled to receive had he retired on that date on a medical certificate.

6.—(1) Subsection (1) of section 8 of the Act of 1921 shall have effect in relation to the engagement of a member of a home police force, with the consent of the appropriate authority and of the Secretary of State, as a member of the Corps, and to his reversion under either subsection (1) of section 2 of the Act or that subsection as applied either by subsection (2) of section 14 of the Police Act, 1946, or by subsection (2) of section 9 of the Police (Scotland) Act, 1946, as if such engagement and reversion were removals with the sanction described in the said subsection (1) of section 8.

(2) A reversionary member of a home police force shall not be deemed to have removed from the Corps within the meaning of subsection (1) of section 8 of the Act of 1921 to a police force other than the force to which he has a right of reversion

unless he has obtained the written sanction of the appropriate authority to such removal.

(3) Subsection (2) of section 8 of the Act of 1921 shall have effect as if any payment by a police authority to the Secretary of State under sub-paragraph (7) of paragraph 3 of this Schedule were a grant referred to in the said subsection.

7.—(1) Section 12 of the Act of 1921 shall not apply to a member of the Corps.

(2) A member of the Corps or a person who has been such a member shall not be entitled to a pension or gratuity in respect of incapacity unless—

(i) either he obtains a certificate under sub-paragraph (5) (i) and (ii) of this paragraph or it is deemed under sub-paragraph (9) of this paragraph that he is disabled and that the disablement is likely to become permanent; and

(ii) where the claim is for a special pension he obtains a certificate under sub-paragraph (5) (iii), (iv) and (v) of this paragraph.

(3) If a member of the Corps claims to be entitled to receive a grant under paragraph (b), (c) or (d) of subsection (1) of section 2 of the Act of 1921 or under sub-paragraph (1) of paragraph 3 of this Schedule, the Secretary of State shall appoint a qualified medical practitioner to examine him.

(4) The Chief Officer shall give the appointed medical practitioner all necessary information as to the claimant's history and, where the claimant is still a member of the Corps, as to what his future duties would be if he remains such a member.

(5) After examining the claimant and considering all relevant information the appointed medical practitioner—

(i) if he is satisfied that the claimant is incapacitated for the performance of his duty by infirmity of mind or body, shall so certify, and

(ii) if he is satisfied that the incapacity is likely to be permanent, shall so certify:

where the appointed medical practitioner certifies as in (ii) above or it is deemed under sub-paragraph (9) of this paragraph that the claimant is disabled and that his disablement is likely to be permanent, the appointed medical practitioner—

(iii) if he is satisfied that the infirmity producing the incapacity or disablement was occasioned by the causes alleged by the claimant, shall so certify,

(iv) if he is satisfied that the injury occasioning the infirmity was received without the claimant's own default, shall so certify, and

(v) shall certify the degree of incapacity or disablement.

(6) A copy of the certificate under sub-paragraph (5) shall be given to the claimant.

(7) If the claimant is dissatisfied with the certificate of the appointed medical practitioner and, within twenty-one days of the receipt by the claimant of the copy of the certificate, applies to the Secretary of State to appoint a medical referee, the Secretary of State shall appoint a medical referee.

(8) The medical referee after examining the claimant and considering all relevant information, whether or not it was information available to the appointed medical practitioner, shall issue whatever certificate under sub-paragraph (5) of this paragraph would be in his opinion proper.

(9) Where a person who after leaving the Corps and serving in a home police force and having been given by the police authority of that force a grant under paragraph (b), (c) or (d) of subsection (1) of section 2 of the Act of 1921 claims a pension under sub-paragraph (1) of paragraph 3 of this Schedule, it shall be deemed that he is disabled and that the disablement is likely to be permanent.

(10) The decision of an appointed medical practitioner to certify or to refuse to certify under sub-paragraph (5) of this paragraph shall, unless there is an appeal to a medical referee, be final on all questions within his consideration under the said sub-paragraph.

(11) The decision of the medical referee to certify or to refuse to certify under sub-paragraph (5) of this paragraph shall, unless a claim is referred to him by an appeal tribunal, be final on all questions within his consideration under the said sub-paragraph, and his decision on such a reference shall, subject to any further reference, be final.

(12) Where a person is in receipt of a special pension granted to him by the Secretary of State, the Secretary of State may, as often as he thinks it desirable

within five years of the date of the grant of the pension, require him to be examined by an appointed medical practitioner and, on such requirement, sub-paragraphs (5), (6), (7) and (8) of this paragraph shall apply.

(13) The Secretary of State on receipt of the certificate of the appointed medical practitioner or, as the case may be, of the medical referee under sub-paragraph (12) above may, if the pensioner's degree of disablement has altered, reassess the amount of the pension accordingly subject to the limits prescribed by paragraph 4 of the First Schedule to the Act of 1921 and, if the pensioner's incapacity has permanently ceased, reduce the pension of a reversionary member of a home police force to the pension that would have been payable to him on Scale No. 6 in the Table subjoined to Part I of the First Schedule to the Act of 1921 and may end the pension of any other person.

(14) If a claimant or, as the case may be, a pensioner refuses or wilfully or negligently fails to submit himself for examination by an appointed medical practitioner or a medical referee under this paragraph or refuses or wilfully or negligently fails in connection with such examination to supply the practitioner or referee with any information, the Secretary of State may deal with him in all respects as if certificates under sub-paragraphs (5) and (8) of this paragraph of such a nature as the Secretary of State may determine had been issued.

8.—(1) Subsection (1) of section 17 of the Act of 1921 shall not apply to a grant payable or claimed to be payable by the Secretary of State under these Regulations.

(2) Where—

(a) a pension or allowance granted by the Secretary of State under these Regulations is subsequently, in pursuance of the Act of 1921 as applied by these Regulations, declared by him to have been forfeited,

(b) any person claims as of right from the Secretary of State a grant under these Regulations and the Secretary of State does not admit the claim, or

(c) any person claims as of right from the Secretary of State a grant under these Regulations larger than that granted to that person,

the person aggrieved may apply to the Secretary of State for a reconsideration of the case and, if aggrieved by his decision upon such reconsideration, may appeal to an appeal tribunal.

(3) An appeal tribunal shall be appointed by the Secretary of State if any person notifies him of his desire to appeal to such a tribunal under sub-paragraph (2) and may be appointed either to hear all appeals under the said sub-paragraph or to hear any particular appeal or class or description of appeal.

(4) An appeal tribunal shall consist of three members who are respectively a barrister, advocate or solicitor of not less than seven years' standing, a duly qualified medical practitioner of not less than seven years' standing and a retired member of the Corps, of the German Corps or of a home police force who either held a rank in the Corps or the German Corps not lower than that of Deputy Assistant Inspector-General or held a rank in the force not lower than that of superintendent.

(5) If the appeal tribunal decide that the evidence before the appointed medical practitioner or, if there has been an appeal to a medical referee, before that referee was inaccurate or inadequate, they may refer the matter again to the practitioner or, as the case may be, the referee to consider the matter again and issue any amended certificate he thinks proper.

(6) Subject to any general or special directions of the Secretary of State an appeal tribunal shall determine its own procedure.

(7) The provisions of subsection (2) of section 17 of the Act of 1921 shall have effect in relation to any decision of an appeal tribunal with the substitution for references to quarter sessions of references to the appeal tribunal.

9.—(1) Section 18 of the Act of 1921 shall not apply to a person in receipt of a pension granted by the Secretary of State under these Regulations.

(2) Where a person in receipt of a pension granted by the Secretary of State under these Regulations takes service in any police force other than as a member of the first class of the police reserve or as an ex-member of a police force who joins a force for service in an emergency, the said pension shall cease forthwith and all rights in respect of that person to a grant shall cease.

(3) Where a person who was in receipt of a special pension which has ceased under the provisions of sub-paragraph (2) above subsequently becomes incapacitated

for the performance of his duty or dies, his rights under the Act of 1921 and the rights of any other person in respect of him under that Act against the police authority of any force of which he was a member after ceasing to be a member of the Corps shall be determined as if the injury on account of which he received the special pension which has ceased had been received otherwise than in the execution of his duty.

10. The references in subsection (3) of section 29 and in section 31 of the Act of 1921 to the provisions of that Act shall have effect in relation to the Corps and service in the Corps as references to the provisions of that Act as applied by these Regulations.

11.—(1) For the purposes of paragraphs 6 and 10 of the First Schedule to the Act of 1921 the rank of Police Staff Officer Grade III shall be deemed to be the rank of inspector, and all higher ranks in the Corps shall be deemed to be ranks higher than that of inspector.

(2) For the purpose of proviso (i) to sub-paragraph (a) of paragraph 20 of the First Schedule to the Act of 1921 an appointment to the Corps shall, in the case of a reversionary member of a home police force, be deemed to be a promotion.

(3) Sub-paragraph (b) of the said paragraph 20 shall not apply to the Corps.

12. In this Schedule the expression "disabled" means disabled by infirmity of mind or body to such an extent as would incapacitate a member of the Corps for the performance of his duty, and "disablement" has a corresponding meaning.  
[1241]

## POLICE REGULATIONS, 1947

*S. R. & O., 1947, No. 1608*

*July 28, 1947*

I, the Right Honourable James Chuter Ede, one of His Majesty's Principal Secretaries of State, in pursuance of the powers conferred on me by section four of the Police Act, 1919, hereby make the following Regulations :—

### RANK AND DESIGNATIONS

1. The ranks of a police force shall be known by the following designations :—

Chief Constable (except when the title Head Constable is used)  
Superintendent  
Inspector  
Sergeant  
Constable. [1242]

2. In forces where varying degrees of responsibility render intermediate ranks necessary, one or more of the following ranks may be retained or adopted as the case may be, subject, in each case, to the approval of the Secretary of State :—

Assistant Chief Constable  
Chief Superintendent  
Chief Inspector  
Sub-divisional Inspector  
Sub-Inspector  
Station Sergeant  
Acting Sergeant. [1243]

3. An officer in a borough police force duly appointed by the watch committee to act as deputy chief constable shall, in the absence or incapacity of the chief constable or during any vacancy in that rank, have all the powers and duties of the chief constable not specifically excluded by resolution of the committee. [1244]



4. The area within the jurisdiction of each police force shall be known as a police district.

The area to which a constable is assigned for duty either generally (as in the case of a detached constable of a county force) or for a particular period of hours (as is normally the case in an urban area) shall be known as a beat, or may, in a county force, be called a sub-section.

A number of beats grouped for supervision by a sergeant or an inspector shall be known as a section.

If a number of sections is grouped for supervision by an inspector, the area shall be known as a sub-division.

A number of sections, or sub-divisions, grouped for control by a superintendent or, in a borough force, by an officer of other rank directly responsible to the chief officer of police, shall be known as a division.

The same terms "division", "sub-division" and "section" shall be applicable to the body of men acting under the direction of the superintendent, inspector or sergeant, as the case may be, as well as to the areas in which they respectively act. [1245]

#### STRENGTH

5. The authorised establishment of the several ranks and any changes thereof in every police force shall be subject to the approval of the Secretary of State. [1246]

6. The numbers shall be sufficient to provide men for the carrying out of patrol, station, reserve and any other appointed police duties under responsible supervision in each tour of duty. [1247]

#### APPOINTMENT

7. A candidate for appointment to a police force—

- (1) must produce satisfactory references as to character, and, if he has served in any branch of His Majesty's naval, military or air forces, or in the Civil Service, or in any police force, produce satisfactory proof of his good conduct while in such service or force : a person dismissed from any such service or force shall not be eligible for appointment ;
- (2) must be under thirty years of age, or in the case of an appointment as chief officer of police, forty years of age :

Provided that a candidate over the specified age limit may be appointed—

- (a) if he has had previous service in a police force otherwise than as an auxiliary or is otherwise entitled to reckon previous service as approved service for purposes of pension, or
- (b) in other special circumstances approved by the Secretary of State upon the recommendation of the appointing authority, that is to say, the chief officer of police or the police authority, as the case may be ;
- (3) must, save for special reasons approved by the Secretary of State, be not less in height than 5 feet 8 inches ;
- (4) must be certified by the medical officer of the force to be in good health, of sound constitution and fitted both physically and mentally to perform the duties of his office ;
- (5) must satisfy the chief officer of police that he is sufficiently educated by passing a written or oral examination in reading, writing and arithmetic (addition, subtraction, multiplication and division), or an examination of a higher standard, as may be prescribed by the chief officer of police, or by producing evidence that he has



passed another examination which, in the opinion of the chief officer of police, is of an equivalent or higher standard ;

- (6) must give such information as may be required as to his previous history or employment or any other matter relating to his appointment to the police force, and if any candidate makes in, or in connection with, his application for appointment any false statement and is subsequently appointed to a police force, the making of such false statement shall be an offence against discipline within the meaning of these Regulations and paragraph (5) of the Discipline Code contained in the First Schedule to these Regulations, and shall be punishable accordingly. [1248]

8. No person shall be eligible for appointment to, or shall be retained in, a police force to which these Regulations apply, if—

- (a) he carries on any business or without the consent of the chief officer of police holds any other office or employment for hire or gain, or
- (b) he resides, without the consent of the chief officer of police, at any premises where his wife or any member of his family keeps a shop or carries on any like business, or
- (c) he holds, or his wife or any member of his family living with him holds, any licence granted in pursuance of the liquor licensing laws or the laws regulating places of public entertainment in the district of the police force in which he seeks appointment or to which he has been appointed, as the case may be, or has any pecuniary interest in any such licence, or
- (d) his wife, without the consent of the chief officer of police, keeps a shop or carries on any like business in the district of the police force in which he seeks appointment or to which he has been appointed, as the case may be :

Provided that, in case of refusal of consent, there shall, in a borough police force, be an appeal to the watch committee, whose decision shall be final.

For the purpose of this Regulation, the expression " member of his family " shall include parent, son, daughter, brother and sister. [1249]

9. Every appointment to the post of chief officer of police of any county or borough police force shall be subject to the approval of the Secretary of State, and no person without previous police experience shall be appointed to any such post unless he possesses some exceptional qualification or experience which specially fits him for the post, or there is no candidate from the police service who is considered sufficiently well qualified. [1250]

10. A constable shall be on probation for the period of the first two years of his service in the force since his last appointment thereto :

Provided that the chief officer of police may at his discretion—

- (a) reduce the period of probation to a period of not less than one year, if the constable has served for a period of not less than one year either in the same force on a previous appointment thereto or in any other force to which the Police Act, 1919, applies or applied :
- (b) dispense with the period of probation if the constable has transferred with the written consent of the chief officer of police from another force to which the Police Act, 1919, applies or applied after having completed the required period of probation in that force ; or
- (c) dispense with the period of probation if the constable has served as an auxiliary for a period of not less than two years. [1251]

11. During the period of probation the services of any constable may be dispensed with at any time if the chief officer of police considers that he is

not fitted, physically or mentally, to perform the duties of his office, or that he is not likely to become an efficient and well conducted constable :

Provided that a constable whose services are dispensed with under this Regulation shall be entitled to receive one week's notice or one week's pay in lieu thereof. [1252]

#### DISCIPLINE

12. In every police force to which these Regulations apply there shall be published to the force a code of offences against discipline. The code for each force shall contain the provisions of the Discipline Code contained in the First Schedule to these Regulations, with any additions thereto made by the police authority and approved by the Secretary of State :

Provided that such approval shall be provisional until the addition has been laid before the Police Council. [1253]

13. Every member of the force against whom a report or complaint suggesting the commission of an offence against discipline is made shall, as soon as possible, be informed in writing of the exact charge against him. [1254]

14. The written charge must disclose an offence against discipline as defined in the code of offences against discipline of the force, with such details of time and place as will leave the accused under no misapprehension as to the offence with which he is charged. [1255]

15. The written charge, which shall be entered on a form provided for the purpose (hereinafter referred to as the misconduct form), together with the report or complaint on which the charge is founded, and all reports thereon (whether confidential or otherwise) or copies thereof, shall be handed or sent as soon as practicable to the accused, who shall initial them to show that he has seen them. He shall either be allowed to retain for purposes of his defence the copies of the reports which are handed to him or shall be given a reasonable opportunity to make copies of the reports for that purpose. [1256]

16. The accused shall be directed to state in writing upon the misconduct form whether he admits or denies the charge and shall be allowed to give any explanation which he may wish to offer in writing. He shall also be allowed to state whether he desires to offer his explanation personally to the chief officer of police and shall, if he desires it, be given an opportunity of so doing. [1257]

17. The accused shall also be allowed to state the names of any witnesses to material facts whom he desires to be present when the charge is heard. Any such witnesses who are members of the police force shall be ordered to attend, and any witnesses who are not members of the force shall be given due notice that their attendance is desired and of the place and time of the hearing. [1258]

18. If the accused denies the charge, he shall, unless the chief officer of police is satisfied with the explanation he has offered, be ordered to appear before the chief officer of police and shall have an opportunity of hearing the evidence against him and of cross-examining the witnesses and of calling witnesses in his defence. [1259]

19. The decision of the chief officer of police shall be written upon the misconduct form and at once notified to the accused, who shall write on the misconduct form his acknowledgment of his having read the decision. [1260]

20.—(1) In the case of the metropolitan police the procedure in discipline cases shall be as specially approved by the Secretary of State and published in the General Orders of that force.

(2) In the case of a borough police force, the decision of the chief officer of police shall, subject to any general directions of the watch committee, be either—

- (i) to dismiss the case, or
- (ii) to remit the case to the watch committee for further hearing, or
- (iii) to award a punishment as provided in Regulation 21 :

Provided that any punishment other than a caution shall be subject to confirmation by the watch committee, and any member of the force who feels aggrieved by a decision of the chief officer of police awarding a punishment shall be entitled to appear before the watch committee upon giving notice in writing to the chief officer of police forthwith or at any later date not less than three clear days before his case is to be laid before the committee. [1261]

20A. The following provisions shall have effect with respect to disciplinary proceedings before the chief officer of police and also to proceedings before the watch committee :—

- (1) if the accused so desires, he shall be allowed to have another serving member of the force, selected by himself, to assist him in presenting his case :
- (2) if the accused absconds or refuses or neglects without good and sufficient cause to attend the proceedings at the time and place appointed, or is serving a sentence of imprisonment or penal servitude, the case may be decided in his absence. [1262]

20B.—(1) The chief officer of police may suspend from duty a member of the force against whom a report or complaint suggesting the commission of an offence against discipline is made. Such suspension from duty may continue until the disciplinary proceedings arising out of the said report or complaint have been concluded.

(2) Subject to the provisions of this Regulation, these Regulations shall continue to apply to a member of the force who is suspended from duty.

(3) A member of the force who is suspended from duty shall not be entitled in respect of the period of suspension to pay or to uniform allowance, plain clothes allowance, detective allowance, extra duty allowance or temporary duty allowance, but shall be paid a suspension allowance at such rate not less than one-half and not exceeding two-thirds of his pay as the chief officer of police may determine :

Provided that in the case of a member of the force who has been convicted of an offence summarily or on indictment no suspension allowance shall be payable in respect of any period of imprisonment or penal servitude.

(4) A member of the force who, having been suspended from duty, returns to duty without having been found guilty of any offence shall receive, as from the date of his suspension from duty, his pay and any of the said allowances of which he was in receipt immediately prior to his suspension from duty, less any amount paid to him by way of suspension allowance. [1263]

21. An offence against discipline may be punished by—

- (1) dismissal ;
- (2) being required to resign forthwith, or at such date as may be ordered (as an alternative to dismissal) ;
- (3) reduction in rank ;
- (4) reduction in rate of pay ;
- (5) forfeiture of merit or good conduct badges (except such as have been granted for an act of courage or bravery) ;
- (6) fine ;
- (7) reprimand ;
- (8) caution.

Every punishment, except a caution, shall be entered on the man's personal record. A caution shall not be so entered. [1264]

22. A reduction in pay, without reduction in rank, shall be limited to a definite period, which shall be stated in the order by which the punishment is inflicted and shall not exceed twelve months, and at the end of the stated period the man shall be advanced to the rate of pay to which he would have been entitled but for the punishment awarded him, unless the period of reduction has in the meantime been extended by way of punishment for a further offence against discipline. [1265]

23. The infliction of a fine shall not cause any advance in pay (except any additional or any special increment which is subject to good conduct as provided in the Regulations relating to pay) to be retarded or withheld. [1266]

24. The amount of a fine imposed by way of punishment for any one offence shall not exceed one week's pay and shall be recovered by stoppage of pay in amounts not exceeding one day's pay in any week, except in the event of a man leaving the force, when the whole amount of any fine then unpaid may be deducted from any pay then due. [1267]

25. There shall be kept in the office of the chief officer of police a disciplinary report book in which he shall cause to be entered, directly it comes to his knowledge, every report or complaint alleging the commission of any offence against discipline by any member of his force (other than an anonymous allegation unsupported by evidence) together with the result of his inquiry and any disciplinary action taken in consequence. [1268]

26. There shall be kept in the headquarters office of each division a divisional disciplinary report book in which the superintendent or other officer in charge of the division shall enter, directly it comes to his knowledge, every report or complaint alleging the commission of any offence against discipline by any member of his division (other than an anonymous allegation unsupported by evidence) together with particulars of any action taken and, in particular, whether he has dealt with the matter by warning or has reported it to the chief officer of police. [1269]

#### PROMOTION

27. Promotion up to the rank of inspector shall, subject to qualifying examinations in police duties and educational subjects, be by selection, and every member of a police force who is promoted to the rank of sergeant or inspector shall be on probation in that rank for a period of one year. [1270]

27A.—(1) A member of a police force who is required to perform the duties of a higher rank may be promoted temporarily to that rank.

(2) A member of a police force who is promoted substantively or temporarily and has, less than two years before the date of promotion, held the same rank on a temporary promotion thereto shall, for the purpose of increments in the scale of pay for that rank, be entitled to aggregate all his former service in that rank on temporary promotion.

(3) This Regulation shall not apply to a case where a deputy chief constable performs the duties of chief constable. [1271]

28.—(1) No member of a police force shall be promoted to the rank of sergeant or inspector, unless—

(a) if a constable, he has completed five years' service, and has for the last two years been free from punishment other than reprimand or caution, and if a sergeant, he has completed two years in that rank free from punishment other than reprimand or caution ;

- (b) he has passed, after having completed not less than four years' service, an examination in educational subjects and an examination in police duties ;
- (c) he has had not less than one year's service in the performance of ordinary outside police duty :

Provided that—

- (i) a member of a police force may be promoted before he has completed five years' service, or may be permitted to take the qualifying examinations before he has completed four years' service if the chief officer of police, or, in the case of a borough police force, the watch committee, is satisfied that he possesses special qualifications for the performance of the particular duties on which he is to be employed ;
- (ii) the chief officer of police may dispense with the examination in educational subjects if he is satisfied that the sergeant or constable has passed an examination of an equivalent or higher standard ;
- (iii) where members of a police force are engaged wholly or mainly on specialised duties of a technical character the examination in police duties may, subject to the approval of the Secretary of State, be replaced in their case by an alternative technical examination.

(2) In this Regulation "service" means "approved service" as defined by section 7 of the Police Pensions Act, 1921, and service as an auxiliary, and the expression "ordinary outside police duty" includes detective duty.  
[1272]

**29.** The examinations shall be conducted by means of written papers or oral examinations, or both, upon the following subjects :—

- (1) Examination in educational subjects, including—

- (a) reading aloud ;
- (b) writing, including handwriting, spelling, punctuation, and the writing and composition of reports ;
- (c) arithmetic, for promotion to sergeant, first four rules, simple and compound, including imperial weights and measures, and simple fractions ; for promotion to inspector, first four rules, simple and compound, including imperial weights and measures, reduction, vulgar fractions and decimals (excluding recurring decimals), ratio and proportion, averages and percentages ;
- (d) geography, especially the geography of the British Isles ;
- (e) general knowledge and intelligence ; and
- (f) any special subject or subjects which may be required in the circumstances of a particular force or forces.

- (2) Examination in police duties, including—

- (a) criminal law ;
- (b) evidence and procedure ;
- (c) general statutes, regulations and orders ;
- (d) local regulations and byelaws ;
- (e) extra duties performed by the particular force concerned ; and
- (f) principles of local government.

- (3) The papers on the educational subjects (b), (c), (d) and (e) shall be set and marked by a central examining authority approved by the Secretary of State, or such other competent examining body as the police authority of the force may select. The examinations in police duties and, where necessary, the educational subjects (a)

and (f) shall be conducted by the chief officer of police or, where the size of the force permits, a board of officers acting under his directions.

- (4) The examinations shall be held in large forces periodically, at least once in each year, and in smaller forces as often as may be required, and, subject to the provisions of Regulation 32, any sergeant or constable who has completed four years' service and has given due notice to the chief officer of police shall be entitled to sit for the respective examinations for these ranks. [1273]

30. The object of the required examinations is to test the educational and theoretical knowledge of the candidate, and the fact that he has passed them shall not entitle him to promotion or to promotion before another member of the force who has passed the examination at a later date. [1274]

31. After each examination a list giving the names of the candidates who have passed shall be published to the force or forces concerned. The result of each examination shall be marked on the record of each candidate so as to show that, on the date in question, he passed or failed to pass, and a list shall be kept of all members of the force who have passed the respective examinations. [1275]

32. A candidate who fails to pass the examination in educational subjects or police duties shall be informed of the subject or subjects in which he has failed to pass, and failure to pass shall not disqualify a candidate from presenting himself at a future examination after an interval of not less than one year. [1276]

#### HOURS OF DUTY

33. Every member of a police force shall carry out all lawful orders and shall at all times punctually and promptly perform all appointed duties and attend to all matters within the scope of his office as a constable. [1277]

34. The normal daily period for which constables, sergeants and inspectors (other than inspectors in sole charge of a sub-division, or members of the force normally employed in duties specially excepted by the Secretary of State) shall be required to perform their appointed police duties shall be eight hours, exclusive of time occupied in parading for relief, waiting for relief and returning to station after relief. Where the duties are performed in one tour of eight hours an interval of thirty minutes for refreshment shall be allowed. [1278]

35. The normal period of duty may be extended by or under the directions of the chief officer of police on any particular day or for a specified period as respects any member or members of the force; and nothing in these Regulations shall affect the obligation of any constable to carry out any lawful orders or to attend at any time to any matter to which it is his duty as a constable to attend. [1279]

36. When the normal period of duty of any member of a police force is so extended, or he is recalled to do duty after his normal hours, so that in any week the aggregate of any periods of duty in excess of the normal period of duty amounts to half an hour or more, he shall be granted, if and as soon as the exigencies of duty will permit, time off from duty equal to the said aggregate:

Provided that when a man after returning home is recalled for any specific duty (including attendance at court) the period allowed as "time-off" shall cover, in addition to the actual period of duty, the time occupied in going from and returning to his home, not exceeding such reasonable limit as may be fixed by the chief officer of police; and in the case of a man who has worked a full tour on night duty and is summoned from his home to do duty



before 3.30 p.m., the period allowed as "time-off" under this Regulation shall be not less than four hours.

In this Regulation "week" means that period of seven days beginning and ending at the same times as those on which the pay of constables in the force in question is normally calculated. [1280]

37.—(1) Where, in the opinion of the chief officer of police, the exigencies of duty do not permit of any sergeant or constable being granted the whole period of "time-off" from duty under the preceding Regulation within such reasonable period (not exceeding three months) as the chief officer of police may fix, the man shall be granted in lieu of so much of the period of "time-off" as has not been granted to him, being not less than one hour, a non-pensionable payment at the rate of 4s. 3d. an hour for a sergeant and 3s. 6d. an hour for a constable.

(2) Where a sergeant or constable is engaged on duty involving his employment for irregular periods beyond the normal duty period so that the extension thereof cannot be definitely assessed and "time-off" cannot be granted, he may be granted, in lieu of all payments under paragraph (1) of this Regulation, a non-pensionable commuted payment at the rate provided in Regulation 72. [1281]

38. The provisions of Regulations 36 and 37 shall not apply—

- (a) if a man is warned to be in readiness for duty if required, but is not actually recalled to duty ;
- (b) if he is paid in respect of the same incident of duty a detective allowance, a detachment duty allowance, an extra duty allowance, or any other allowance granted in respect of his being engaged beyond the ordinary duty period :

Provided that the hours of duty of a detective shall be subject to such adjustments as may be approved by the chief officer of police to meet occasions when exceptionally long hours of duty have been worked ;

- (c) if he is engaged on casual escort duty. [1282]

39. Where a member of a police force to whom the Police (Weekly Rest Day) Act, 1910, applies is required to perform duty on a day which would otherwise have been a rest day, he shall be granted another rest day in lieu if and as soon as the exigencies of duty will permit ; and if, in the opinion of the chief officer of police, the exigencies of duty do not permit of the grant of another rest day within such reasonable period (not exceeding three months) as he may fix, the man shall be granted a non-pensionable payment at the rate prescribed by paragraph (1) of Regulation 37, or, in any case to which that paragraph does not apply, at the rate of one-sixth of his pay in respect of the week in which the rest day on which he was required to do duty fell. [1283]

40. On any occasion or occasions of emergency within the meaning of the Police (Weekly Rest Day) Act, 1910, the Secretary of State may direct that the provisions of Regulations 36, 37, 38 and 39 shall apply only to such extent and under such conditions as he may prescribe. [1284]

#### LEAVE OF ABSENCE

41. Every member of a police force of the rank of chief inspector or any lower rank shall, so far as the exigencies of duty permit, be granted leave of absence (hereinafter referred to as annual leave) in addition to the days upon which he is not required to perform police duties in compliance with the Police (Weekly Rest Day) Act, 1910, so that the members of the several



ranks shall be granted annual leave in each complete calendar year as follows :—

	<i>Days</i>
Chief Inspectors .. .. .	27
Sub-divisional Inspectors and Station Inspectors in the Metropolitan Police .. .. .	25
Inspectors .. .. .	24
Sub-Inspectors .. .. .	22
Metropolitan Police Station Sergeants and Metropolitan Police First Class Sergeants (Criminal Investigation Department)	22
Sergeants .. .. .	20
Constables .. .. .	18

Provided that a member of a police force, in the calendar year in which he is appointed and in that in which he retires in pursuance of a notice of intention to retire, shall, so far as the exigencies of duty permit, be granted annual leave at the rate of one-twelfth of the period hereinbefore specified for his rank for each complete month of service in that year, a fraction of a day being reckoned as one day. [1285]

42. Chief Officers of police, superintendents and any other officers not entitled to a weekly rest day shall, so far as the exigencies of duty permit, be granted in each complete calendar year leave of absence of not less than forty-two days, with an additional six days in each year after completing ten years' service in the rank, and shall also be allowed leave for one day and a half in each calendar month. [1286]

43. Inspectors, sergeants and constables shall, if the exigencies of duty permit, be allowed to take their annual leave in one period continuous with the weekly rest days of the weeks in which the leave is taken. [1287]

#### PERSONAL RECORDS

44.—(1) The chief officer of police shall cause a personal record of each member of the police force to be kept and, if that member becomes a member of another police force, shall, on demand by the chief officer of police of that other force, transmit to him a copy thereof.

(2) The personal record shall contain entries of the man's description, particulars of his birth place and date of birth, his family, any service in the Royal Navy, the Army, the Royal Air Force, the Civil Service or in any other police force or as an auxiliary, the date of his appointment, all postings, transfers and removals, all changes in pay, all promotions, all injuries received, all periods of sickness and of leave, all absence (if records of sickness and leave are not kept separately), all commendations, rewards and punishments and the date of his ceasing to be a member of the force, with the reason, cause or manner thereof. [1288]

45.—(1) On leaving the force (except in case of transfer, with the written consent of the chief officer of police, to another force) every man shall be given a certificate showing his rank and setting out the period of his service and the reason, cause or manner of his leaving the force, together with particulars of his personal description :

Provided that, where the man was required to resign or was dismissed, the certificate shall not contain any description of the circumstances in which he was required to resign or was dismissed.

(2) The chief officer of police may append to the certificate any recommendation which he feels justified in giving, such as—

His conduct was exemplary

His conduct was very good

His conduct was good. [1289]

## PAY

47.—(1) The pay of members of a police force holding the rank of sergeant or constable shall be in accordance with the provisions of these Regulations.

(2) Subject to Regulation 27A, the pay of all other ranks shall be in accordance with the scale of pay of the force, which shall be subject to the approval of the Secretary of State.

(3) No pensionable payment other than those above referred to shall be made. [1290]

*Scales of pay*

48. Subject to the provisions of Regulations 27A and 63, the scales of pay for sergeants and constables shall be as follows :—

## Scale of pay for sergeants

						s.	d.
On promotion	..	..	..	..	..	150	0 weekly
After one year from promotion	..	..	..	..	..	153	0 "
„ two years	„	„	..	..	..	156	0 "
„ three	„	„	..	..	..	159	0 "
„ four	„	„	..	..	..	162	0 "
„ five	„	„	..	..	..	165	0 "

## Scale of pay for constables

						s.	d.
On appointment	..	..	..	..	..	105	0 weekly
After two years from appointment	..	..	..	..	..	108	0 "
„ three	„	„	..	..	..	111	0 "
„ four	„	„	..	..	..	114	0 "
„ five	„	„	..	..	..	117	0 "
„ six	„	„	..	..	..	120	0 "
„ seven	„	„	..	..	..	123	0 "
„ eight	„	„	..	..	..	126	0 "
„ nine	„	„	..	..	..	129	0 "
„ ten	„	„	..	..	..	132	0 "

[1291]

49. One day's pay shall be calculated for all purposes at the rate of one-seventh of the weekly rate. [1292]

51.—(1) All increments in the scale of pay for constables (except any increments granted under special conditions as provided in Regulations 53 to 61) and all increments in the scales of pay for the higher ranks shall be granted automatically upon completion of the stated periods of service, reckoned from the constable's appointment to the force or his promotion to the higher rank, as the case may be, and the grant of any increment shall not be retarded or withheld on account of any offence or other cause except on a specific order of reduction in rank or pay by way of punishment of an offence as provided in the Regulations relating to discipline.

(2) Where a member of a police force is promoted, having served for three years or more in the same force with pay not less than the minimum pay appropriate to the rank to which he is promoted, he may be granted on promotion one increment in the scale of pay appropriate to that rank. [1293]

52.—(1) If a member of a police force transfers with the written consent of the chief officer of police (or, in the case of transfer of a chief officer of police, with the sanction of the police authority) to the same rank in another force, previous service which he is entitled to reckon for purposes of pay

in the force from which he transfers shall (unless otherwise agreed upon) count for purposes of reckoning his pay in the force which he joins as follows :—

- (a) if he transfers to a force with the same or a lower scale of pay for his rank, the whole of his previous service in that rank shall count ;
- (b) if he transfers to a force with a higher scale of pay for his rank, such portion of his previous service in that rank shall count as will bring his pay in the force which he joins up to the amount he was receiving in the force from which he transfers.

(2) Where a constable who has resigned from a police force subsequently joins the same or any other force, the police authority may, if they think fit, allow his service which he was entitled to reckon for purposes of pay in the force from which he resigned to be reckoned in whole or part for the purposes of pay in the force which he joins. [1294]

*Grant of special increments of pay for constables*

53. Subject to Regulations 60 and 63, a constable who has passed the qualifying examinations for promotion in police duties and educational subjects, may, at any time after he has served for five years, be granted a special increment in his scale of pay if the chief officer of police is satisfied that he shows special zeal, intelligence and proficiency in the performance of his duties and that he is well conducted. [1295]

54. A constable who is in receipt of a special increment under Regulation 53 may, at any time after he has served for one year from the date of the grant of the special increment, be granted a second special increment in his scale of pay if the chief officer of police is satisfied that he shows special zeal, intelligence and proficiency in the performance of his duties and is well conducted :

Provided that a second special increment may be granted under this Regulation immediately on the grant of a special increment under Regulation 53 if the chief officer of police is satisfied that the constable would by then have qualified for a second special increment if he had not ceased to serve as a constable in such circumstances that section 1 of the Police and Firemen (War Service) Act, 1939, applied to him. [1296]

55. A constable who has been granted a special increment or increments shall be paid at the rate at which he would be paid on the scale in Regulation 48, if he had been appointed, in the case of a grant of one special increment, one year and, in the case of a grant of two special increments, two years before he was appointed. [1297]

*Grant of additional increments of pay for constables*

56.—(1) Subject to Regulations 60 and 63, a constable who either has served for seventeen years or, having been granted a special increment which has not been withdrawn, has served for sixteen years or, having been granted two special increments which have not been withdrawn, has served for fifteen years may at any time after he has completed the appropriate qualifying period be granted an additional increment of 4s. a week in his pay if the chief officer of police is satisfied that he shows zeal and proficiency in the performance of his duties and that he is well conducted :

Provided that a constable may be granted an additional increment at any time after he has served for fifteen years, notwithstanding that he is not in receipt of the requisite number of special increments if—

- (a) the chief officer of police is satisfied that he would be in receipt of the requisite number of special increments if he had not ceased to serve as a constable in such circumstances that section 1 of the Police and Firemen (War Service) Act, 1939, applied to him, and

(b) he has passed the qualifying examination for promotion not later than two years after resuming service as a constable.

(2) For the purposes of this Regulation a constable shall be deemed to have served during any period which, by virtue of subsection (1) of section 2 of the Police and Firemen (War Service) Act, 1939, is to be treated as a period of approved service or would be so treated if the proviso to the said subsection did not apply. [1298]

57. A constable who is in receipt of an additional increment may, at any time after he has served for five years from the date when an additional increment was first granted to him exclusive of any period during which the additional increment was withdrawn from him, be granted a second additional increment of 4s. a week in his pay if the chief officer of police is satisfied that he shows zeal and proficiency in the performance of his duties and is well conducted :

Provided that—

- (a) a constable who has previously held a higher rank and has served for twenty-two years (including service as an auxiliary) may be granted a second additional increment after he has served for one year, instead of five years, from the date of the grant of the additional increment ;
- (b) a second additional increment shall not be granted to a constable from whom an additional increment has been withdrawn until a period of one year has elapsed from the date when an additional increment has last been granted to him. [1299]

58.—(1) As soon as a constable has served for the appropriate qualifying period under Regulation 56 or Regulation 57, the chief officer of police shall consider whether an additional increment or, as the case may be, a second additional increment should be granted to him.

(2) A constable who has acquired a right under paragraph (1) of this Regulation to have the question considered whether a grant should be made to him may apply to the chief officer of police, as soon as may be after the end of each period of one or more complete years from the date when he acquired the right, again to consider the question, and it shall accordingly again be considered.

(3) A constable from whom an additional increment or increments has or have been withdrawn under Regulation 59 may apply to the chief officer of police at the end of each period of one or more complete years from the date of the withdrawal to consider whether an additional increment should be granted to him, and it shall accordingly be considered.

(4) If on consideration under paragraph (1) or (2) of this Regulation no grant is made, the constable shall, if he applies for the information, be informed in writing why no grant was made. [1300]

*General provisions as to grant and withdrawal of special and additional increments of pay for constables*

59. If the chief officer of police is of opinion—

- (a) that a constable in receipt of a special increment or increments is not showing special zeal, intelligence or proficiency in the performance of his duties or that he is well conducted, or
- (b) that a constable in receipt of an additional increment or increments is not showing zeal or proficiency in the performance of his duties or that he is not well conducted,

the constable shall be given a written warning of the opinion of the chief officer of police and if, at the end of a period of two months from the date

of the warning or of such longer period as may be specified in the warning, the chief officer of police is still of the same opinion, the increment or increments shall be withdrawn :

Provided that if after the latest grant to the constable under Regulation 53, 54, 56 or 57—

- (a) the constable is guilty of any default for which he is punished by a fine of 20s. or any greater punishment, or
- (b) the constable is guilty, during any period of twelve months, of two defaults for which he is punished by punishments other than cautions, or
- (c) the constable is guilty of more than three defaults for which he is punished by punishments other than cautions,

the increment or increments may be withdrawn without warning. [1301]

60. No special or additional increment shall be granted to a constable from whom an increment or increments has or have been withdrawn under Regulation 59 until a period of one year has elapsed from the date of the withdrawal. [1302]

61. The grant or withdrawal of any increment under Regulations 53 to 60 inclusive to or from a constable in a borough police force shall be subject to confirmation by the watch committee. [1303]

#### *Auxiliary service*

63. For the purpose of applying the scale of pay for constables and of reckoning the qualifying period for the grant of a special or an additional increment there shall be added to the constable's service any period of service as an auxiliary. [1304]

### ALLOWANCES

64. All allowances shall be non-pensionable and the amounts and conditions of payment shall be subject to the approval of the Secretary of State, and no allowances shall be paid except such as are prescribed in these Regulations or approved by the Secretary of State. [1305]

#### *Rent allowance and supplementary allowance*

65.—(1) A police authority shall provide each member of a police force with a house or quarters free of rent and rates or shall pay him a rent allowance :

Provided that a man to whom Regulation 65A applies who is provided with quarters shall be paid a rent allowance in addition.

(2) Subject to the provisions of Regulation 65A, a rent allowance shall be either—

- (a) a "flat-rate allowance" for married and single men of each rank respectively, the amount to be fixed so as to cover a reasonable average rent (with rates) for members of the rank in question to pay, or
- (b) a "maximum limit allowance" equal to the actual amount paid in rent and rates by the individual members of the force, subject to a maximum limit to be fixed for married and single men of each rank respectively.

(3) A rent allowance at the married men's rate—

- (a) shall be paid to a married member of the force not separated from his wife ;

- (b) if the police authority think fit, may be paid to a married member of the police force separated from his wife, to a single member of the police force who has a dependent relative living with him and, whether or not he has a dependent relative living with him, to a member of the police force who has divorced, or been divorced by, his wife or is a widower ;

and in all other cases a rent allowance at the single men's rate shall be paid :

Provided that a married member of the police force separated from his wife or a member of the police force who has divorced, or been divorced by, his wife and who regularly makes periodic payments to her or for her benefit may be granted an addition to his rent allowance equal to whichever is the lesser of the two following amounts, namely, the amount by which his former allowance exceeds his present allowance or the amount paid by him to or for the benefit of his wife or former wife.

(4) In this Regulation—

(a) the expression “ his former allowance ” means—

- (i) in relation to a man who, immediately before his wife commenced to live apart from him, was being provided with a house or quarters free of rent and rates, a sum fixed as the value for the time being of that house or those quarters ; and
- (ii) in relation to any other man, the rent allowance which would for the time being be payable to him if his wife or former wife were living with him and he were paying the rent and rates which he was paying immediately before his wife commenced to live apart from him ;

(b) the expression “ his present allowance ” means the rent allowance which is being paid to the member of the police force or, as the case may be, a sum fixed as the value for the time being of the house or quarters with which under this Regulation he is provided ;

(c) the expression “ rates ” means—

- (i) any rate as defined by section 68 of the Rating and Valuation Act, 1925 ; and
- (ii) any rate for a supply of water for domestic purposes determined by reference to net annual value independently of the quantity of water consumed. [1306]

65A.—(1) This Regulation shall apply to a member of a police force who—

- (a) is a married man or a widower with a child or children to whom the police authority have decided to grant a rent allowance at the married men's rate,
- (b) is not living with his family, and
- (c) satisfies the chief officer of police that the only reason why he is not so living is that he is unable to find suitable accommodation for his family at a reasonable cost within a reasonable distance of his place of duty.

(2) Notwithstanding the provisions of Regulation 65, the rent allowance to be paid to a member of a police force to whom this Regulation applies shall be that which would be payable to him under Regulation 65 if he were a member of the force of the police area in which his family are for the time being living and he were living with his family.

(3) A member of a police force to whom this Regulation applies shall be paid a supplementary allowance at the following rate :—

- (a) if he is provided by the police authority with quarters free of rent and rates, 17s. 6d. a week ;
- (b) if he is not so provided, 25s. 0d. a week.

(4) The supplementary allowance payable under paragraph (3) of this Regulation may be reduced or withdrawn by the police authority in respect of any period consisting of one or more complete weeks throughout which the member in question is absent from his usual place of duty and is either—

- (a) on leave of absence, or
- (b) in receipt of a subsistence and lodging allowance under Regulation 70.

(5) This Regulation shall cease to have effect on the thirty-first day of December, 1948. [1307]

#### *Compensatory grant*

65B.—(1) In the year commencing on the sixth day of April, 1947, and in each subsequent year, a member of a police force who has during the preceding year paid income tax in respect of a rent allowance or any compensatory grant mentioned in this paragraph paid or made to him in respect of his service in the force shall be paid a compensatory grant.

(2) The amount of the compensatory grant shall be equal to the amount by which the income tax in fact deducted during the preceding year according to the tax tables prepared or prescribed by the Commissioners of Inland Revenue from the member's emoluments in respect of his service in the force is increased by virtue of the inclusion in such emoluments of a rent allowance or any compensatory grant mentioned in this Regulation paid or made to him.

(3) The compensatory grant may, except in the circumstances described in paragraph (4) of this Regulation, be paid by such instalments throughout the year in which it is payable as the police authority may determine.

(4) Where a member of a police force leaves the force or dies whilst serving in the force he or his personal representatives, as the case may be, shall be paid the whole of the compensatory grant due to the member during that year and, in addition, shall be paid a further compensatory grant of an amount which bears the same proportion to the compensatory grant payable during that year as the period during which he has served during that year bears to the period during which he has served in the force during the preceding year.

(5) For the purposes of this Regulation—

- (a) the word “ year ” means the year commencing on the sixth day of April and ending on the following fifth day of April ; and
- (b) where a member of a police force has served more than once in the same force, references in this Regulation to service in the force shall be construed as references to his service therein since his last appointment thereto. [1308]

#### *Uniform allowance*

66. A member of a police force of or above the rank of inspector who does duty in uniform but is not supplied with uniform by the police authority shall be paid in lieu a uniform allowance at a rate calculated to cover the cost of supplying and maintaining the required uniform. [1309]



*Boot allowance*

67. A member of a police force who is not supplied with boots by the police authority shall be paid in lieu a boot allowance at the rate of 2s. weekly. [1310]

*Plain clothes allowance*

68. A member of a police force who is required to do duty in plain clothes for a period of not less than one week shall be paid a plain clothes allowance at that one of the following rates which is appropriate to his rank, namely—

Superintendent	..	..	..	..	£22 10s per annum
Inspector	..	..	..	..	£20 per annum
Sergeant or constable	..	..	..	..	7s. 6d. a week :

Provided that a sergeant or constable—

- (a) who is required to do duty in plain clothes for not less than six days in any period of three months shall be paid a plain clothes allowance in respect of each day at a rate equal to one-sixth of the weekly rate ;
- (b) who is provided with overalls when doing duty in plain clothes or for any other reason is, in the opinion of the Secretary of State, put to substantially less or substantially more than the normal expense caused by wearing his own clothes on duty may be paid a plain clothes allowance at a rate approved by the Secretary of State. [1811]

*Detective allowance*

69. A member of a police force who is engaged in detective duties continuously for a period of one or more complete weeks shall be paid a detective allowance at the rate of—

Superintendents and inspectors	..	..	..	15s. 0d. weekly
Sergeants and constables	..	..	..	12s. 6d. weekly

or such higher or lower rate as may be approved in special circumstances by the Secretary of State. This allowance shall be payable in addition to a plain clothes allowance. [1312]

*Subsistence and lodging allowance*

70.—(1) A member of a police force of or below the rank of superintendent who, being retained on duty beyond his normal period of duty or being engaged on duty away from his usual place of duty, necessarily incurs additional expense to obtain food or lodging, shall—

- (a) if the period for which he is so retained or engaged exceeds one hour but does not exceed five hours, be paid a refreshment allowance ;
- (b) if the period for which he is so retained or engaged exceeds five hours, be paid a subsistence allowance ;
- (c) if the said expense includes expense of obtaining lodging, be paid a lodging allowance.

(2) Notwithstanding anything in the preceding paragraph a member of a police force of or below the rank of superintendent who satisfies the chief officer of police that during his normal period of duty he was, although not away from his usual place of duty, unable by reason of the exigencies of duty to obtain his meals in his usual way and that he necessarily incurred additional expense for the purpose may be paid a refreshment allowance.

(3) The amount of the said allowances shall be according to the following scale :—

Description of Allowance	Super-intendents	Inspectors	Sergeants and Constables
Refreshment Allowance—			
(i) for one meal .. ..	3s. 6d.	3s. 0d.	2s. 6d.
(ii) for two meals .. ..	5s. 0d.	4s. 6d.	4s. 0d.
Subsistence Allowance : Period of retention or engagement—			
(i) over 5 hours and not exceeding 8 hours ..	5s. 0d.	4s. 6d.	4s. 0d.
(ii) over 8 hours and not exceeding 12 hours ..	7s. 6d.	6s. 6d.	5s. 6d.
(iii) over 12 hours and not exceeding 24 hours ..	10s. 6d.	9s. 0d.	8s. 0d.
(iv) over 24 hours—at the rate under (iii) above for each complete period of 24 hours retention or engagement, together with whichever is the appropriate amount under the preceding provisions of this scale for any excess over the aggregate of such complete periods.			
Lodging Allowance—			
For each night .. ..	10s. 6d.	9s. 6d.	8s. 6d.

Provided that—

- (a) if a lodging allowance is payable as well as a subsistence allowance in respect of a total period of retention or engagement of sixteen hours or less, the subsistence allowance shall be of the amount appropriate to a retention or engagement for a period exceeding eight hours and not exceeding twelve hours ;
- (b) if the chief officer of police is satisfied in any particular case that the amount of the allowances specified above is not sufficient to cover the actual expenses necessarily incurred, he may authorise payment of the difference ;
- (c) if the chief officer of police is satisfied in any particular case that the amount of the allowances specified above would be excessive having regard to the additional expenses necessarily incurred, he may direct that the amount of the allowances shall be reduced to such an amount as he determines, not being less than the amount of such expenses ;
- (d) if a member of a police force is so retained or engaged for a period exceeding one week, he may, if the chief officer of police is satisfied that the allowances specified above would be excessive, be granted in lieu thereof a weekly allowance at such lower rate as may be necessary to cover his reasonable expenses.

(4) Where the place of duty of a member of a police force has been temporarily changed the expression in this Regulation “usual place of duty” shall, after such period from the date of change as the chief officer of police may determine, mean the temporary place of duty. [1313]

71. Where a member of a police force of or below the rank of inspector is required to do duty away from his usual place of duty he shall be given an advance to cover, as far as practicable, any expenses which he will probably incur. [1314]

*Detachment duty allowance*

72.—(1) Where a member of a police force is employed as part of a detachment lent in aid of another police force in circumstances that involve his sleeping away from home, a detachment duty allowance shall be payable in consideration of such duty at the rate of—

8s. 0d.	daily for a superintendent
6s. 6d.	„ „ an inspector
5s. 6d.	„ „ a sergeant
4s. 6d.	„ „ a constable

during the period of absence. When lodging and meals are not provided by the aided police authority, this allowance shall be payable in addition to any subsistence or lodging allowance to which the man may be entitled.

(2) A detachment duty allowance at the foregoing rates may be paid where members of the metropolitan police or any county police force are employed for a period of three or more complete days on detachment duty within the police district of the force to which they belong, *i.e.* as part of a detachment reinforcing another division, sub-division or section, in circumstances that involve their sleeping away from home. [1315]

*Extra duty allowance*

73.—(1) Where the police are required to undertake any of the following duties, a member of the force so engaged may receive an extra duty allowance, to be payable by the authority for which the duties are undertaken, if the police authority are satisfied that the performance of such extra duties causes, either regularly or on recurring occasions, a material addition to his normal hours of duty as a constable :—

- (i) duties of inspector under the Diseases of Animals Acts, 1894 to 1937, and making of returns in relation thereto ;
- (ii) inspection of weights and measures ;
- (iii) inspection and procuring samples under the Food and Drugs Act, 1938, and the Fertilizers and Feeding Stuffs Act, 1926 ;
- (iv) inspection of premises for the purposes of the Explosives Acts, 1875 and 1923, and the Petroleum (Consolidation) Act, 1928 ;
- (v) duties of inspector under the Shops Acts, 1912 to 1938 ;
- (vi) duties on behalf of the local authority in respect of local taxation licences, *i.e.* enforcement of the requirements as to licences for male servants, carriages and armorial bearings.

(2) In respect of the following duties no allowance shall be payable other than the allowance or payment (if any) to which the constable would normally be entitled in respect of extended hours of police duty as provided in these Regulations :—

- (i) enforcement of the Cinematograph Act, 1909, and the Celluloid and Cinematograph Film Act, 1922 ;
- (ii) enforcement of borough bye-laws ;
- (iii) billeting ;
- (iv) issue of pedlars' certificates ;

nor in respect of any of the following duties where undertaken by the police :—

- (i) inspection of domestic servants' registries ;
- (ii) inspection of common lodging houses ;
- (iii) inspection of hackney carriages ;
- (iv) inspection of licensed boats ;
- (v) inspection of beach trading ;
- (vi) inspection of markets ;
- (vii) inspection of fire appliances ;
- (viii) inspection of street lamps ;
- (ix) duties as assistant relieving officer :

Provided that nothing in this Regulation shall be deemed to prevent a member of a police force who acts as assistant relieving officer from receiving an annual allowance in lieu of any other payments in respect of extended hours of duty, if the chief officer of police, or, in the case of a chief constable, the police authority, is satisfied that the performance of the duty causes a material addition to his normal work.

(3) The following are duties which the police shall not be required to perform :—

- (i) collection and recovery of monies due under affiliation orders ;
- (ii) collection and recovery of monies due under maintenance orders under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925 ;
- (iii) collection of market tolls ;
- (iv) Mayor's attendant ;
- (v) town crier ;
- (vi) any other work not connected with police duty which, in the opinion of the Secretary of State, the police may not properly be required to perform :

Provided that nothing in this Regulation shall preclude the collection of monies by a member of a police force appointed, with the consent of the police authority, collecting officer under the Affiliation Orders Act, 1914, or under the Criminal Justice Administration Act, 1914, or the receipt of monies tendered at a police station, or shall affect the duties of the police in the execution of any warrant. [1316]

#### *Temporary duty allowance*

74. Where a constable is required to perform the duties of a sergeant, or a sergeant is required to perform the duties of a station sergeant, sub-inspector or inspector, or a station sergeant or sub-inspector is required to perform the duties of an inspector, either to fill a temporary vacancy or for some other special purpose and for a continuous period exceeding two weeks, he shall be granted in respect of such service, after the first two weeks, an allowance in addition to his pay, at a rate equal to the difference between his ordinary rate of pay and the lowest rate of pay of the rank in which he is temporarily acting. [1317]

#### *Miscellaneous provisions as to allowances*

75. An allowance may be paid, of such amount and under such conditions as may be approved by the Secretary of State on the recommendation of the police authority, in respect of recurring escort duty or other specific duties involving recurring detention on duty beyond the normal period and not covered by any other payment. [1318]

76. A member of a police force employed at the expense of a private person or persons shall be entitled to such payments as are provided in these Regulations by way of subsistence or lodging allowance or refreshment allowance or as payment in respect of extended hours of duty, but shall not receive any special allowance in consideration of the purpose for which he is employed. All payments so due shall be made by the police authority and recovered from the person or persons for whose benefit the constable is employed. [1319]

77. If a man who is regularly in receipt of a plain clothes allowance or detective allowance or any other allowance to meet an expense which ceases during his absence from duty is placed upon the sick list, the allowance shall be payable during his absence from duty up to a period of one month, but thereafter, during the remainder of his absence from duty, payment may be

suspended at the discretion of the chief officer of police, subject, in a borough police force, to the approval of the watch committee :

Provided that the boot allowance shall not cease to be payable during a period of sickness. [1320]

#### CLOTHING, EQUIPMENT AND NECESSARIES

78. Every member of a police force shall provide himself with clothing which is sufficient for his health and suitable to a person employed in the police service, and shall be in possession of two pairs of boots suitable for duty. [1321]

79. All articles of uniform, clothing and equipment necessary for the performance of police duty shall be provided by the police authority for all ranks free of cost to the individual member of the force, provided that officers of and above the rank of inspector may be paid a money allowance in lieu. [1322]

80. Issues of uniform shall, so far as circumstances permit, be made at stated periods, but where particular duties, or the duties of a particular man, entail greater or less wear of all articles or of any particular article of uniform, the issue to a particular man, or the issue of any particular garment, may be made on requisition approved by the chief officer of police. Clothing for particular duties such as mounted duty, cycling, driving of horsed or motor vehicles, stable duty or station cleaning, may be issued on requisition. [1323]

81. Subject to any modifications approved by the Secretary of State, the issues of articles of uniform and equipment for sergeants and constables shall be as follows :—

Article	Issue	Period of Wear	Number in Possession
Body Coat ( <i>i.e.</i> tunic, frock coat, patrol jacket, winter jacket, summer jacket, summer serge, as the case may be)	Annual	Two years or four years (according to whether one, two or more patterns of coat are supplied)	Two of each
(If tunics or other full dress coats are reserved for ceremonial duty only, their issue shall be on requisition over and above the periodical issue.)			
Trousers .. .. .	Two pairs annually	Two years	Four pairs
(Where more than one material is provided, the issue shall be alternated to meet the demands of use.)			
Greatcoat .. .. .	Every two years	Four years	Two
Cape .. .. .	Every four or five years	Eight or ten years	Two
Headdress .. .. .	Issue to be as required		Two

(Where a second pattern of headdress is supplied, the issue shall be alternated to meet the demands of use.)

Where boots are provided by the police authority for the purposes of duty, the issue shall be at the rate of two pairs annually, or as may be approved by the Secretary of State. [1324]

82. The following articles of equipment shall be supplied as circumstances require :—

Armlet and buckle  
 Button brushes and button stick  
 Cape strap and sling  
 Gloves  
 Handcuffs  
 Haversack or kit bag  
 Lamp  
 Leggings  
 Overalls  
 Pocket note-book  
 Truncheon  
 Waist-belt  
 Warrant card  
 Waterproof coat or cape  
 Whistle and chain. [1325]

83. All clothing and articles of equipment issued are for use in the performance of duty; they shall not become the property of the individual member of the force and must be delivered up by him on his leaving the force. [1326]

84. All garments supplied by the police authority (but not boots) shall be returned to store on being replaced at the expiry of the prescribed period of wear, and the amounts realised by their sale shall be paid to the police fund :

Provided that, if the police authority so directs, cast garments may be retained upon a payment to be fixed by the police authority, the amount of which, except in the case of trousers, shall be assessed according to the amount likely to be realised by the sale of the garments. [1327]

85. Replacement of lost, damaged, faulty or ill-fitting garments, and repairs (other than minor repairs which the man can satisfactorily do himself) shall be made or done at the expense of the police authority, except in the case of loss or damage caused by the man's default. [1328]

86. Part-worn clothing returned to store shall not be issued to another man until it has been properly cleaned and is in serviceable condition. [1329]

#### MEDICAL ATTENDANCE AND STOPPAGES FROM PAY

87. A member of a police force shall not be entitled to be absent from duty on account of injury or illness except on the authority of a medical officer for the force or other medical practitioner appointed or approved by the police authority :

Provided that where, owing to the absence of the man on leave or for other unavoidable cause, the authority of a medical officer for the force cannot be given, the certificate of some other medical practitioner may be accepted in lieu by the police authority. [1330]

87A. Where a member of a police force, who is not incapacitated for duty by illness, is relieved of duty on account of his having been in contact with infectious disease, without his own default, he shall not be liable to any deduction from pay or from annual or other leave in respect of such absence from duty. [1331]

88.—(1) The police authority shall provide for every member of the police force when incapacitated for duty by injury or illness without his own

default free medical attendance by a medical officer for the force or other medical practitioner appointed or approved by the police authority, such attention to include the supply of necessary medicines and drugs :

Provided that—

- (i) nothing in this paragraph shall prevent a man who receives treatment in a hospital from being required to contribute towards the cost of his maintenance in the hospital, and any such contribution may be deducted from his pay ;
  - (ii) if a member of a police force is certified by a medical officer for the force or other medical practitioner appointed or approved by the police authority to require special treatment, it shall be provided without cost to him if his incapacity was due to an injury received in the execution of his duty without his own default, and otherwise the provision of such special treatment shall be at the discretion of the police authority.
- (2) Where a member of a police force has been granted a pension in respect of an injury received in the execution of his duty without his own default, the police authority may provide, without cost to the pensioner, such medical attendance, by a medical officer for the force or other medical practitioner appointed or approved by the police authority, as the pensioner may require by reason of the injury in respect of which he retired or such special treatment as he may require as a result of the injury aforesaid.

(3) The police authority shall provide free dental treatment, including the provision of a denture or dentures where necessary, for every member of the police force in whose case a medical officer for the force or other medical practitioner or registered dentist appointed or approved by the police authority certifies that such treatment or denture is necessary for the man's health and continued efficiency in the police service and that the necessity does not arise from the man's own neglect or default. [1832]

89A. In reckoning the approved service of a member of a police force no deduction from service shall be made in respect of duly authorised absence from duty occasioned by sickness, unless a medical officer for the force or other medical practitioner certifies that the man has brought about or contributed to the sickness by his own default or vicious habits. [1833]

#### MISCELLANEOUS PROVISIONS

89B.—(1) Subject to the provisions of paragraph (3) hereof, a member of a county police force or a combined police force who, having been a member of the police force of a borough comprised in the county or the combined area, has been transferred to the county police force or the combined police force by or under the provisions of the Police Act, 1946, shall not be assigned to duties which in the opinion of the Secretary of State make it necessary for him to establish his home outside the borough.

(2) This Regulation shall apply in relation to a member of a county police force or a combined police force who has been a member of the police force of a borough comprised in the county or the combined area and either reverts to the county police force or the combined police force under subsection (1) of section 2 of the Police (Overseas Service) Act, 1945, as applied by subsection (2) of section 14 of the Police Act, 1946, or, having been a person to whom section 1 of the Police and Firemen (War Service) Act, 1939, applied, became a member of the county police force or the combined police force without having been deemed under subsection (2) of section 2 of the last-named Act to have retired, in the same manner as it applies to a member of a county police force or a combined police force who has been transferred thereto by or under the provisions of the Police Act, 1946.



(3) This Regulation shall not apply to such a member of a county police force or combined police force as is described above if, since he became a member of the police force of the borough—

- (a) he has been a chief officer of police ;
- (b) he has retired, resigned or been dismissed from a police force, has been deemed to have retired from a police force under subsection (2) of section 2 of the Police and Firemen (War Service) Act, 1939, or has engaged for a period of overseas service in such a manner that he has not acquired, under subsection (1) of section 2 of the Police (Overseas Service) Act, 1945, a right of reverter or, having acquired the said right of reverter, has lost or not availed himself of the said right or has removed, within the meaning of subsection (1) of section 8 of the Police Pensions Act, 1921, from one police force to another ;
- (c) the police force of the borough has become subject to a consolidation agreement under section 14 of the County Police Act, 1840 ; or
- (d) he has given written notice to the chief officer of police of any county police force or combined police force of which he was at the time a member of his desire that this Regulation should cease to apply to him.

(4) Where a member of a county police force or combined police force has been a member of the police force of more than one borough comprised in the county or combined area references in this Regulation to the police force of such a borough shall, in relation to him, be construed as references to the police force of such a borough of which he was last a member. [1334]

89c. For the purposes of these Regulations service in a police force from which a constable is transferred by or under the Police Act, 1946, and service in the force to which he is so transferred shall be treated as if it were service in the same force. [1335]

90.—(1) In these Regulations a reference to service as an auxiliary is to be taken as a reference to all whole-time paid service after the third day of September, 1939, as a police war reservist, as a special constable whose pay was granted under the Special Constables Order, 1940, or, while the constable in question was not in receipt of a pension under the Police Pensions Acts, 1921 and 1926, as a member of the first class of the police reserve, including all leave with full pay and any period of leave without full pay not exceeding seven days in duration, but excluding any period of leave without full pay exceeding seven days in duration and any period of absence or suspension without full pay or the equivalent of full pay ; and for the purpose of this paragraph leave shall not be taken to be leave without full pay by reason only that there was deducted from the man's pay the amount of benefits under the National Health Insurance Acts, 1936 to 1941, of payments made under any scheme made by the Minister of Pensions under the Personal Injuries (Emergency Provisions) Act, 1939, or of any weekly payments under the Workmen's Compensation Acts, 1925 to 1945, and in connection with any reference to service as an auxiliary a reference to service as an auxiliary in a force shall be taken to include a reference to service as an auxiliary with that force.

(2) Any reference in these Regulations to a county police force, a borough police force or a watch committee shall, except in Regulation 89B, include a reference respectively to a combined force constituted by a county scheme, a combined force constituted by a borough scheme or a police authority constituted by a borough scheme. [1336]

91.—(1) In these Regulations a reference to a Regulation shall, unless the contrary intention appears, be construed as a reference to a Regulation contained in these Regulations.

(2) The Interpretation Act, 1889, shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament. [1337]

94. These Regulations shall apply to all police forces in England and Wales to which the Police Act, 1919, applies, and in their application to the metropolitan police force they shall apply subject to the following modifications :—

- (a) ranks other than those specified in Regulation 2 may be adopted with the approval of the Secretary of State ;
- (b) Regulations 28 to 32 (which relate to promotion) and Regulations 34 to 40 (which relate to hours of duty) shall not apply except to members of the force in the ranks of inspector, sergeant (including station sergeant and first class sergeant, Criminal Investigation Department) and constable ;
- (c) Regulations 68 to 72 and Regulation 74 (which relate to allowances) shall not apply except to members of the force in the ranks of inspector, sergeant (including station sergeant and first class sergeant, Criminal Investigation Department) and constable. [1338]

95.—(1) The Regulations set out in the Second Schedule to these Regulations are hereby revoked.

(2) Section 38 of the Interpretation Act, 1889, shall apply as if these Regulations were an Act of Parliament and as if any Regulations revoked by these Regulations were Acts of Parliament repealed by an Act of Parliament.

(3) Any appointment, grant, withdrawal of a grant or publication made or approval, certificate, consent or notice given or any record kept or other thing done under any Regulation revoked by these Regulations shall not be invalidated by the revocation effected by paragraph (1) of this Regulation, but shall, in so far as it could have been made, given, kept or done under a provision of these Regulations, have effect as if it had been made, given, kept or done under that provision.

(4) Any proceedings initiated, suspension from duty ordered or punishment imposed in respect of an offence or alleged offence against a code of offences against discipline for any police force shall be deemed to have been initiated, ordered or imposed under these Regulations.

(5) Any reference in any document to any Regulations revoked by these Regulations or any provision thereof shall, unless the contrary intention appears, be construed as a reference to these Regulations or the corresponding provision of these Regulations. [1339]

96.—(1) These Regulations may be cited as the Police Regulations, 1947.

(2) These Regulations shall come into force on the first day of August, 1947. [1340]

\* \* \* \* \*

## FIRST SCHEDULE

### DISCIPLINE CODE

Any member of a police force commits an offence against discipline if he is guilty of :—

- (1) *Discreditable conduct*, that is to say, if he acts in a disorderly manner or any manner prejudicial to discipline or likely to bring discredit on the reputation of the force or of the police service.

- (2) *Insubordinate or oppressive conduct*, that is to say, if he—
- (a) is insubordinate by word, act or demeanour, or
  - (b) is guilty of oppressive or tyrannical conduct towards an inferior in rank, or
  - (c) uses obscene, abusive or insulting language to any other member of the force, or
  - (d) wilfully or negligently makes any false complaint or statement against any member of the force, or
  - (e) assaults any other member of the force, or
  - (f) overholds any complaint or report against any member of the force.
- (3) *Disobedience to orders*, that is to say, if he disobeys or without good and sufficient cause omits or neglects to carry out any lawful order, written or otherwise.
- (4) *Neglect of duty*, that is to say, if he—
- (a) neglects, or without good and sufficient cause omits, promptly and diligently to attend to or carry out anything which is his duty as a constable, or
  - (b) idles or gossips while on duty, or
  - (c) fails to work his beat in accordance with orders, or leaves his beat, point, or other place of duty to which he has been ordered, without due permission or sufficient cause, or
  - (d) by carelessness or neglect permits a prisoner to escape, or
  - (e) fails, when knowing where any offender is to be found, to report the same, or to make due exertions for making him amenable to justice, or
  - (f) fails to report any matter which it is his duty to report, or
  - (g) fails to report anything which he knows concerning a criminal charge, or fails to disclose any evidence which he, or any person within his knowledge, can give for or against any prisoner or defendant to a criminal charge, or
  - (h) omits to make any necessary entry in any official document or book, or
  - (i) neglects, or without good and sufficient cause omits, to carry out any instructions of a medical officer of the force, or, while absent from duty on account of sickness, is guilty of any act or conduct calculated to retard his return to duty.
- (5) *Falsehood or prevarication*, that is to say, if he—
- (a) knowingly makes or signs any false statement in any official document or book, or
  - (b) wilfully or negligently makes any false, misleading or inaccurate statement, or
  - (c) without good and sufficient cause destroys or mutilates any official document or record, or alters or erases any entry therein.
- (6) *Breach of confidence*, that is to say, if he—
- (a) divulges any matter which it is his duty to keep secret, or
  - (b) gives notice, directly or indirectly, to any person against whom any warrant or summons has been or is about to be issued, except in the lawful execution of such warrant or service of such summons, or
  - (c) without proper authority communicates to the public press, or to any unauthorised person, any matter connected with the force, or
  - (d) without proper authority shows to any person outside the force any book or written or printed document the property of the police authority, or
  - (e) makes any anonymous communication to the police authority or the chief officer of police or any superior officer, or
  - (f) canvasses any member of the police authority or of any county, city or borough council with regard to any matter concerning the force, or
  - (g) signs or circulates any petition or statement with regard to any matter concerning the force, except through the proper channel of correspondence to the chief officer of police or the police authority, or in accordance with the constitution of the Police Federation, or
  - (h) calls or attends any unauthorised meeting to discuss any matter concerning the force.

- (7) *Corrupt practice*, that is to say, if he—
- (a) receives any bribe, or
  - (b) fails to account for or to make a prompt and true return of any money or property received by him in his official capacity, or
  - (c) directly or indirectly solicits or receives any gratuity, present, subscription or testimonial, without the consent of the chief officer of police or the police authority, or
  - (d) places himself under pecuniary obligation to any publican, beer-retailer, spirit-grocer, or any person who holds a licence concerning the granting or renewal of which the police may have to report or give evidence, or
  - (e) improperly uses his character and position as a member of the force for his private advantage, or
  - (f) in his capacity as a member of the force, writes, signs or gives, without the sanction of the chief officer of police, any testimonial of character or other recommendation with the object of obtaining employment for any person or of supporting an application for the grant of a licence of any kind, or
  - (g) without the sanction of the chief officer of police, supports an application for the grant of a licence of any kind.
- (8) *Unlawful or unnecessary exercise of authority*, that is to say, if he—
- (a) without good and sufficient cause makes any unlawful or unnecessary arrest, or
  - (b) uses any unnecessary violence to any prisoner or other person with whom he may be brought into contact in the execution of his duty, or
  - (c) is uncivil to any member of the public.
- (9) *Malingering*, that is to say, if he feigns or exaggerates any sickness or injury with a view to evading duty.
- (10) *Absence without leave or being late for duty*, that is to say, if he without reasonable excuse is absent without leave from, or is late for, parade, court, or any other duty.
- (11) *Uncleanliness*, that is to say, if he while on duty or while off duty in uniform in a public place is improperly dressed or is dirty or untidy in his person, clothing or accoutrements.
- (12) *Damage to clothing or other articles supplied*, that is to say, if he—
- (a) wilfully or by carelessness causes any waste, loss or damage to any article of clothing or accoutrement, or to any book, document or other property of the police authority, served out to him or used by him or entrusted to his care, or
  - (b) fails to report any loss or damage as above however caused.
- (13) *Drunkenness*, that is to say, if he, while on or off duty, is unfit for duty through drink.
- (14) *Drinking on duty or soliciting drink*, that is to say, if he—
- (a) without the consent of his superior officer, drinks, or receives from any other person, any intoxicating liquor while he is on duty, or
  - (b) demands, or endeavours to persuade any other person to give him, or to purchase or obtain for him, any intoxicating liquor while he is on duty.
- (15) *Entering licensed premises, etc., while on duty*, that is to say, if he enters, while on duty, any premises licensed under the liquor licensing laws, or any other premises where liquors are stored or distributed, when his presence there is not required in the execution of his duty.
- (16) If he lends money to any superior or borrows from or accepts any present from any inferior in rank.
- (17) Any member of a police force also commits an offence against discipline, and shall be liable to punishment as provided in these Regulations, if he is guilty of an offence which is punishable on conviction, whether summarily or on indictment, or if he connives at or is knowingly an accessory to any offence against discipline under this code. [1341]

## SECOND SCHEDULE

## REGULATIONS REVOKED

The Police Regulations of August 20, 1920 (S. R. & O., 1920, No. 1484).  
 The Police Regulations of March 24, 1922 (S. R. & O., 1922, No. 250).  
 The Police Regulations of March 23, 1923 (S. R. & O., 1923, No. 327).  
 The Police Regulations of March 19, 1924 (S. R. & O., 1924, No. 291).  
 The Police Regulations of March 31, 1925 (S. R. & O., 1925, No. 319).  
 The Police Regulations of June 30, 1925 (S. R. & O., 1925, No. 613).  
 The Police Regulations of December 14, 1926 (S. R. & O., 1926, No. 1581).  
 The Police Regulations of July 24, 1930 (S. R. & O., 1930, No. 614).  
 The Police Regulations of October 1, 1931 (S. R. & O., 1931, No. 842).  
 The Police Regulations of November 1, 1932 (S. R. & O., 1932, No. 888).  
 The Police Regulations of April 25, 1933 (S. R. & O., 1933, No. 326).  
 The Police Regulations of June 28, 1934 (S. R. & O., 1934, No. 660).  
 The Police Regulations of June 24, 1935 (S. R. & O., 1935, No. 590).  
 The Police Regulations of July 10, 1939 (S. R. & O., 1939, No. 780).  
 The Police Regulations of September 14, 1940 (S. R. & O., 1940, No. 1704).  
 The Police Regulations of July 21, 1941 (S. R. & O., 1941, No. 1122).  
 The Police Regulations of December 17, 1941 (S. R. & O., 1941, No. 2102).  
 The Police Regulations of July 1, 1942 (S. R. & O., 1942, No. 1345).  
 The Police Regulations of August 31, 1942 (S. R. & O., 1942, No. 1808).  
 The Police Regulations of March 5, 1943 (S. R. & O., 1943, No. 408).  
 The Police Regulations of August 23, 1943 (S. R. & O., 1943, No. 1297).  
 The Police Regulations of March 23, 1944 (S. R. & O., 1944, No. 436).  
 The Police Regulations of August 28, 1944 (S. R. & O., 1944, No. 1022).  
 The Police Regulations of November 4, 1944 (S. R. & O., 1944, No. 1246).  
 The Police Regulations of December 22, 1944 (S. R. & O., 1944, No. 1476).  
 The Police Regulations of March 27, 1945 (S. R. & O., 1945, No. 351).  
 The Police Regulations of December 21, 1945 (S. R. & O., 1945, No. 1651).  
 The Police Regulations of February 22, 1946 (S. R. & O., 1946, No. 270).  
 The Police Regulations of June 27, 1946 (S. R. & O., 1946, No. 951).  
 The Police Regulations of November 6, 1946 (S. R. & O., 1946, No. 1798).  
 The Police Regulations of November 21, 1946 (S. R. & O., 1946, No. 1966).

[1342]

## EXPLANATORY NOTE

*(This Note is not part of the Regulations, but is intended to indicate their general purport.)*

*These Regulations consolidate, with amendments, the Regulations set out in the Second Schedule. The principal amendments are in Regulations 36 and 37 (which relate to "time-off" for excess duty and payments in lieu of "time-off"), 56 and 57 (which relate to additional increments of pay), 65 (which relates to rent allowance) and 72 (which relates to detachment duty allowance).*

## POLICE (WOMEN) REGULATIONS, 1947

S. R. &amp; O., 1947, No. 1604

July 28, 1947

I, the Right Honourable James Chuter Ede, one of His Majesty's Principal Secretaries of State, in pursuance of the powers conferred on me by section four of the Police Act, 1919, hereby make the following Regulations :—

## RANKS AND DESIGNATIONS

1. The ranks of women members of a police force shall be known by such of the following designations as the police authority may adopt :—

Inspector  
 Sergeant  
 Constable

Provided that intermediate or other ranks may be adopted by the police authority, subject to the approval of the Secretary of State. [1343]

#### STRENGTH

2.—(1) The authorised strength of women employed in the several ranks in any police force and any changes thereof shall be subject to the approval of the Secretary of State.

(2) The numbers shall be sufficient to provide women for the carrying out of such of the duties mentioned in the First Schedule to these Regulations as may be assigned to women members of the force by the chief officer of police with the approval of the police authority.

(3) Nothing in these Regulations shall be deemed to prevent women members of a police force being required by proper authority to perform extra duties connected with the police. [1344]

#### APPOINTMENT

3. A candidate for appointment as a woman member of a police force—

(1) must produce satisfactory references as to character, and if she has served in any branch of His Majesty's naval, military or air forces, or in the Civil Service, or in any police force, produce satisfactory proof of her good conduct while in such service or force : a person dismissed from such service or force shall not be eligible for appointment ;

(2) must not be under twenty-two or over thirty-five years of age or less than 5 feet 4 inches in height :

Provided that a candidate who does not comply with the requirements of this paragraph may be appointed—

(a) if she has had previous service in a police force otherwise than in a relevant auxiliary capacity, or

(b) in other special circumstances approved by the Secretary of State ;

(3) must be certified by the medical officer of the force to be in good health, of sound constitution and fitted both physically and mentally to perform the duties of her office ;

(4) must satisfy the chief officer of police that she is sufficiently educated by passing a written or oral examination in reading, writing and arithmetic (addition, subtraction, multiplication and division) or an examination of a higher standard, as may be prescribed by the chief officer of police, or by producing evidence that she has passed another examination which, in the opinion of the chief officer of police, is of an equivalent or higher standard ;

(5) must give such information as may be required as to her previous history or employment or any other matter relating to her appointment to the police force, and if any candidate makes in, or in connection with, her application for appointment any false statement and is subsequently appointed to a police force, the making of such false statement shall be an offence against discipline within the meaning of these Regulations and shall be punishable accordingly. [1345]

4. No person shall be eligible for appointment to, or shall be retained in, a police force to which these Regulations apply, if—

(a) she carries on any business or without the consent of the chief officer of police holds any other office for hire or gain, or

- (b) she resides, without the consent of the chief officer of police, at any premises where her husband or any member of her family keeps a shop or carries on any like business, or
- (c) she holds, or her husband or any member of her family living with her holds, any licence granted in pursuance of the liquor licensing laws or the laws regulating places of public entertainment in the district of the police force in which she seeks appointment or to which she has been appointed, as the case may be, or has any pecuniary interest in any such licence, or
- (d) her husband, without the consent of the chief officer of police, keeps a shop or carries on any like business in the district of the police force in which she seeks appointment or to which she has been appointed, as the case may be :

Provided that, in case of refusal of consent, there shall, in a borough police force, be an appeal to the watch committee, whose decision shall be final.

For the purpose of this Regulation, the expression "member of her family" shall include parent, son, daughter, brother and sister. [1346]

5. A constable shall be on probation for the period of the first two years of her service in the force since her last appointment thereto :

Provided that the chief officer of police may at his discretion—

- (a) reduce the period of probation to a period of not less than one year, if the constable has served for a period of not less than one year either in the same force on a previous appointment thereto or in any other force to which the Police Act, 1919, applies or applied ;
- (b) dispense with the period of probation if the constable has transferred with the written consent of the chief officer of police from another force to which the Police Act, 1919, applies or applied after having completed the required period of probation in that force, or
- (c) dispense with the period of probation if the constable has served in a relevant auxiliary capacity for a period of not less than two years. [1347]

6. During the period of probation the services of any constable may be dispensed with at any time if the chief officer of police considers that she is not fitted, physically or mentally, to perform the duties of her office, or that she is not likely to become an efficient and well conducted constable :

Provided that a constable whose services are dispensed with under this Regulation shall be entitled to receive one week's notice or one week's pay in lieu thereof. [1348]

#### DISCIPLINE

7. Every woman member of the force against whom a report or complaint suggesting the commission of an offence against discipline is made shall, as soon as possible, be informed in writing of the exact charge against her. [1349]

8. The written charge must disclose an offence against discipline as defined in the code of offences against discipline of the force, with such details of time and place as will leave the accused under no misapprehension as to the offence with which she is charged. [1350]

9. The written charge, which shall be entered on a form provided for the purpose (hereinafter referred to as the misconduct form), together with the report or complaint on which the charge is founded, and all reports thereon (whether confidential or otherwise) or copies thereof, shall be handed or sent as soon as practicable to the accused, who shall initial them to show that she has seen them. She shall either be allowed to retain for purposes of her



defence the copies of the reports which are handed to her or shall be given a reasonable opportunity to make copies of the reports for that purpose. [1351]

10. The accused shall be directed to state in writing upon the misconduct form whether she admits or denies the charge and shall be allowed to give any explanation which she may wish to offer in writing. She shall also be allowed to state whether she desires to offer her explanation personally to the chief officer of police and shall, if she desires it, be given an opportunity of so doing. [1352]

11. The accused shall also be allowed to state the names of any witnesses to material facts whom she desires to be present when the charge is heard. Any such witnesses who are members of the police force shall be ordered to attend, and any witnesses who are not members of the force shall be given due notice that their attendance is desired and of the place and time of the hearing. [1353]

12. If the accused denies the charge, she shall, unless the chief officer of police is satisfied with the explanation she has offered, be ordered to appear before the chief officer of police and shall have an opportunity of hearing the evidence against her and of cross-examining the witnesses and of calling witnesses in her defence. [1354]

13. The decision of the chief officer of police shall be written upon the misconduct form and at once notified to the accused, who shall write on the misconduct form her acknowledgment of her having read the decision. [1355]

14.—(1) In the case of the metropolitan police the procedure in discipline cases shall be as specially approved by the Secretary of State and published in the General Orders of that force.

(2) In the case of a borough police force, the decision of the chief officer of police shall, subject to any general directions of the watch committee, be either—

- (i) to dismiss the case, or
- (ii) to remit the case to the watch committee for further hearing, or
- (iii) to award a punishment as provided in Regulation 15 :

Provided that any punishment other than a caution shall be subject to confirmation by the watch committee, and any woman member of the force who feels aggrieved by a decision of the chief officer of police awarding a punishment shall be entitled to appear before the watch committee upon giving notice in writing to the chief officer of police forthwith or at any later date not less than three clear days before her case is to be laid before the committee. [1356]

14A. The following provisions shall have effect with respect to disciplinary proceedings before the chief officer of police and also to proceedings before the watch committee :—

- (1) if the accused so desires, she shall be allowed to have another serving member of the force, selected by herself, to assist her in presenting her case ;
- (2) if the accused absconds or refuses or neglects without good and sufficient cause to attend the proceedings at the time and place appointed, or is serving a sentence of imprisonment or penal servitude, the case may be decided in her absence. [1357]

14B.—(1) The chief officer of police may suspend from duty a woman member of the force against whom a report or complaint suggesting the commission of an offence against discipline is made. Such suspension from

duty may continue until the disciplinary proceedings arising out of the said report or complaint have been concluded.

(2) Subject to the provisions of this Regulation, these Regulations shall continue to apply to a woman member of the force who is suspended from duty.

(3) A woman member of the force who has been suspended from duty shall not be entitled in respect of the period of suspension to pay or to uniform allowance, plain-clothes allowance, detective allowance, extra duty allowance or temporary duty allowance, but shall be paid a suspension allowance at such rate not less than one-half and not exceeding two-thirds of her pay as the chief officer of police may determine :

Provided that in the case of a member of the force who has been convicted of an offence summarily or on indictment no suspension allowance shall be payable in respect of any period of imprisonment or penal servitude.

(4) A member of the force who, having been suspended from duty, returns to duty without having been found guilty of any offence shall receive, as from the date of her suspension from duty, her pay and any of the said allowances of which she was in receipt immediately prior to her suspension from duty, less any amount paid to her by way of suspension allowance. [1358]

15. An offence against discipline may be punished by—

- (1) dismissal ;
- (2) being required to resign forthwith, or at such date as may be ordered (as an alternative to dismissal) ;
- (3) reduction in rank ;
- (4) reduction in rate of pay ;
- (5) forfeiture of merit or good conduct badges (except such as have been granted for an act of courage or bravery) ;
- (6) fine ;
- (7) reprimand ;
- (8) caution.

Every punishment, except a caution, shall be entered on the woman's personal record. A caution shall not be so entered. [1359]

16. A reduction in pay, without reduction in rank, shall be limited to a definite period, which shall be stated in the order by which the punishment is inflicted and shall not exceed twelve months, and at the end of the stated period the woman shall be advanced to the rate of pay to which she would have been entitled but for the punishment awarded her, unless the period of reduction has in the meantime been extended by way of punishment for a further offence against discipline. [1360]

17. The infliction of a fine shall not cause any advance in pay (except any additional or any special increment which is subject to good conduct as provided in the Regulations relating to pay) to be retarded or withheld. [1361]

18. The amount of a fine imposed by way of punishment for any one offence shall not exceed one week's pay and shall be recovered by stoppage of pay in amounts not exceeding one day's pay in any week, except in the event of a woman leaving the force when the whole amount of any fine then unpaid may be deducted from any pay then due. [1362]

19. Every report or complaint alleging the commission of any offence against discipline by a woman member of the force (other than an anonymous allegation unsupported by evidence) shall be duly entered, together with particulars of the action taken thereon, in the disciplinary report book of the force or the divisional disciplinary report book, as the case may be. [1363]

## PROMOTION

20. Promotion up to the rank of inspector shall, subject to qualifying examinations in police duties and educational subjects, be by selection, and every woman member of a police force who is promoted to the rank of sergeant or inspector shall be on probation in that rank for a period of one year. [1364]

20A.—(1) A woman member of a police force who is required to perform the duties of a higher rank may be promoted temporarily to that rank.

(2) A woman member of a police force who is promoted substantively or temporarily and has, less than two years before the date of promotion, held the same rank on a temporary promotion thereto shall, for the purpose of increments in the scale of pay for that rank, be entitled to aggregate all her former service in that rank on temporary promotion. [1365]

21.—(1) No woman member of a police force shall be promoted to the rank of sergeant or inspector, unless—

- (a) if a constable, she has completed 'five years' service and has for the last two years been free from punishment other than reprimand or caution, and if a sergeant, she has completed two years in that rank free from punishment other than reprimand or caution ;
- (b) she has passed, after having completed not less than four years' service, an examination in educational subjects and an examination in police duties :

Provided that—

- (i) a woman member of a police force may be promoted before she has completed five years' service, or may be permitted to take the qualifying examinations before she has completed four years' service, if the chief officer of police, or in the case of a borough police force the watch committee, is satisfied that she possesses special qualifications for the performance of the particular duties on which she is to be employed ;
- (ii) the chief officer of police may dispense with the examination in educational subjects if he is satisfied that the sergeant or constable has passed an examination of an equivalent or higher standard.

(2) For the purposes of this Regulation, the expression " years' service " means, subject to the provisions of paragraph (4) of Regulation 80A, years of approved service as defined by section 7 of the Police Pensions Act, 1921, and service in a relevant auxiliary capacity. [1366]

22. The examinations shall be conducted by means of written papers or oral examinations, or both, upon the following subjects :—

(1) Examination in educational subjects, including—

- (a) reading aloud ;
- (b) writing, including handwriting, spelling, punctuation, and the writing and composition of reports ;
- (c) arithmetic, for promotion to sergeant, first four rules, simple and compound, including imperial weights and measures, and simple fractions ; for promotion to inspector, first four rules, simple and compound, including imperial weights and measures, reduction, vulgar fractions and decimals (excluding recurring decimals), ratio and proportion, averages and percentages ;
- (d) geography, especially the geography of the British Isles ;
- (e) general knowledge and intelligence ; and
- (f) any special subject or subjects which may be required in the circumstances of a particular force or forces.

## (2) Examination in police duties, including—

- (a) criminal law ;
  - (b) evidence and procedure ;
  - (c) general statutes, regulations and orders ;
  - (d) local regulations and byelaws ;
  - (e) extra duties performed by the particular force concerned ; and
  - (f) principles of local government.
- (3) The papers on the educational subjects (b), (c), (d) and (e) shall be set and marked by a central examining authority approved by the Secretary of State, or such other competent examining body as the police authority of the force may select. The examinations in police duties and, where necessary, the educational subjects (a) and (f) shall be conducted by the chief officer of police or, where the size of the force permits, a board of officers acting under his directions.
- (4) The examinations shall be held as often as may be required, and, subject to the provisions of Regulation 25, any sergeant or constable who has completed four years' service and has given due notice to the chief officer of police shall be entitled to sit for the respective examinations for these ranks. [1367]

23. The object of the required examinations is to test the educational and theoretical knowledge of the candidate, and the fact that she has passed them shall not entitle her to promotion or to promotion before another member of the force who has passed the examination at a later date. [1368]

24. After each examination a list giving the names of the candidates who have passed shall be published to the force or forces concerned. The result of each examination shall be marked on the record of each candidate so as to show that, on the date in question, she passed or failed to pass, and a list shall be kept of all members of the force who have passed the respective examinations. [1369]

25. A candidate who fails to pass the examination in educational subjects or police duties shall be informed of the subject or subjects in which she has failed to pass, and failure to pass shall not disqualify a candidate from presenting herself at a future examination after an interval of not less than one year. [1370]

#### HOURS OF DUTY

26. Every woman member of a police force shall carry out all lawful orders and shall at all times punctually and promptly perform all appointed duties and attend to all matters within the scope of her office as a constable. [1371]

27.—(1) The normal daily period for which constables, sergeants and inspectors shall be required to perform their appointed police duties, shall be eight hours, exclusive of time occupied in parading for relief, waiting for relief and returning to station after relief :

Provided that where the duties performed are wholly or mainly patrol duty, the police authority may prescribe a period of seven hours or seven and a half hours as the normal daily duty period.

(2) Where the duties are performed in one tour an interval for refreshment shall be allowed which shall be one hour if the duties are wholly or mainly patrol duty and the duty period is seven and a half hours or more and otherwise shall be thirty minutes. [1372]

28. The normal period of duty may be extended by or under the directions of the chief officer of police on any particular day or for a specified period, as respects any woman member or members of the force ; and nothing

in these Regulations shall affect the obligation of any constable to carry out any lawful orders or to attend at any time to any matter to which it is her duty as a constable to attend. [1373]

29. When the normal period of duty of any woman member of a police force is so extended, or she is recalled to do duty after her normal hours, so that in any week the aggregate of any periods of duty in excess of the normal period of duty amounts to half an hour or more, she shall be granted, if and as soon as the exigencies of duty will permit, time off from duty equal to the said aggregate :

Provided that when a woman after returning home is recalled for any specific duty (including attendance at court) the period allowed as "time-off" shall cover, in addition to the actual period of duty, the time occupied in going from and returning to her home, not exceeding such reasonable limit as may be fixed by the chief officer of police ; and in the case of a woman who has worked a full tour of night duty and is summoned from her home to do duty before 3.30 p.m., the period allowed as "time-off" under this Regulation shall be not less than four hours.

In this Regulation "week" means that period of seven days beginning and ending at the same times as those on which the pay of constables in the force in question is normally calculated. [1374]

30.—(1) Where, in the opinion of the chief officer of police, the exigencies of duty do not permit of any sergeant or constable being granted the whole period of "time-off" from duty under the preceding Regulation within such reasonable period (not exceeding three months) as the chief officer of police may fix, the woman shall be granted in lieu of so much of the period of "time-off" as has not been granted to her, being not less than one hour, a non-pensionable payment at the rate of 3s. 9d. an hour for a sergeant and 3s. 3d. an hour for a constable.

(2) Where a sergeant or constable is engaged on duty involving her employment for irregular periods beyond the normal duty period so that the extension thereof cannot be definitely assessed and "time-off" cannot be granted, she may be granted, in lieu of all payments under paragraph (1) of this Regulation, a non-pensionable commuted payment at the rate provided in Regulation 63. [1375]

31. The provisions of Regulations 29 and 30 shall not apply—

- (a) if a woman is warned to be in readiness for duty if required, but is not actually recalled to duty ;
- (b) if she is paid in respect of the same incident of duty a detective allowance, a detachment duty allowance, an extra duty allowance, or any other allowance granted in respect of her being engaged beyond the normal duty period :

Provided that the hours of duty of a detective shall be subject to such adjustments as may be approved by the chief officer of police to meet occasions when exceptionally long hours of duty have been worked ;

- (c) if she is engaged on casual escort duty. [1376]

32. Where a woman member of a police force to whom the Police (Weekly Rest Day) Act, 1910, applies, is required to perform duty on a day which would otherwise have been a rest day, she shall be granted another rest day in lieu if and as soon as the exigencies of duty will permit ; and if, in the opinion of the chief officer of police, the exigencies of duty do not permit of the grant of another rest day within such reasonable period (not exceeding three months) as he may fix, the woman shall be granted a non-pensionable payment at the rate prescribed by paragraph (1) of Regulation 30 or, in any case to which that paragraph does not apply, at the rate of one-sixth

of her pay in respect of the week in which the rest day on which she was required to do duty fell. [1377]

**32A.** On any occasion or occasions of emergency within the meaning of the Police (Weekly Rest Day) Act, 1910, the Secretary of State may direct that the provisions of Regulations 29, 30, 31 and 32 shall apply only to such extent and under such conditions as he may prescribe. [1378]

#### LEAVE OF ABSENCE

**33.** Every women member of a police force of the rank of chief inspector or sub-divisional inspector (if such ranks are adopted under Regulation 1) or of the rank of inspector or any lower rank shall, so far as the exigencies of duty permit, be granted leave of absence (hereinafter referred to as annual leave) in addition to the days upon which she is not required to perform police duties in compliance with the Police (Weekly Rest Day) Act, 1910, so that the members of the several ranks shall be granted annual leave in each complete calendar year as follows :—

	<i>Days</i>
Chief Inspectors in the Metropolitan Police .. .. .	27
Sub-divisional Inspectors in the Metropolitan Police .. .. .	25
Inspectors .. .. .	24
Sergeants .. .. .	20
Constables .. .. .	18

Provided that a woman member of a police force, in the calendar year in which she is appointed and in that in which she retires in pursuance of a notice of intention to retire, shall, so far as the exigencies of duty permit, be granted annual leave at the rate of one-twelfth of the period hereinbefore specified for her rank for each complete month of service in that year, a fraction of a day being reckoned as one day. [1379]

**34.** Any officers not entitled to a weekly rest day shall, so far as the exigencies of duty permit, be granted in each complete calendar year leave of absence of not less than forty-two days, with an additional six days in each year after completing ten years' service in the rank, and shall also be allowed leave for one day and a half in each calendar month. [1380]

**35.** Inspectors, sergeants and constables shall, if the exigencies of duty permit, be allowed to take their annual leave in one period continuous with the weekly rest days of the weeks in which the leave is taken. [1381]

#### PERSONAL RECORDS

**36.—(1)** The chief officer of police shall cause a personal record of each woman member of the police force to be kept and, if that member becomes a member of another police force, shall, on demand by the chief officer of police of that other force, transmit to him a copy thereof.

**(2)** The personal record shall contain entries of the woman's description, particulars of her birth place and date of birth, her family, any service in the Women's Royal Naval Service, the Auxiliary Territorial Service, the Women's Auxiliary Air Force, the Civil Service, and any other police force, or the Women's Auxiliary Police Corps, the date of her appointment, all postings, transfers and removals, all changes in pay, all promotions, all injuries received, all periods of sickness and of leave, all absence (if records of sickness and leave are not kept separately), all commendations, rewards and punishments, and the date of her ceasing to be a member of the force with the reason, cause or manner thereof. [1382]

**37.—(1)** On leaving the force (except in case of transfer with the written consent of the chief officer of police to another force) every woman shall

be given a certificate showing her rank and stating the period of her service and the reason, cause or manner of her leaving the force, together with particulars of her personal description :

Provided that where the woman was required to resign or was dismissed the certificate shall not contain any description of the circumstances in which she was required to resign or was dismissed.

(2) The chief officer of police may append to the certificate any recommendation which he feels justified in giving, such as—

Her conduct was exemplary

Her conduct was very good

Her conduct was good. [1383]

#### PAY

39.—(1) The pay of women members of a police force holding the rank of sergeant or constable shall be in accordance with the provisions of these Regulations.

(2) Subject to Regulation 20A, the pay of all other ranks shall be in accordance with the scale of pay of the force, which shall be subject to the approval of the Secretary of State.

(3) No pensionable payment other than those above referred to shall be made. [1384]

#### *Scales of pay*

40. Subject to the provisions of Regulations 20A and 54, the scales of pay for sergeants and constables shall be as follows :—

##### Scale of pay for sergeants

	s.	d.
On promotion .. .. .	135	0 weekly
After one year from promotion .. .. .	137	6 "
.. two years .. .. .	140	0 "
.. three .. .. .	142	6 "
.. four .. .. .	145	0 "
.. five .. .. .	148	0 "

##### Scale of pay for constables

	s.	d.
On appointment .. .. .	94	0 weekly
After two years from appointment .. .. .	96	6 "
.. three .. .. .	99	0 "
.. four .. .. .	101	6 "
.. five .. .. .	104	0 "
.. six .. .. .	106	6 "
.. seven .. .. .	109	0 "
.. eight .. .. .	111	6 "
.. nine .. .. .	114	0 "
.. ten .. .. .	117	0 "

[1385]

41. One day's pay shall be calculated for all purposes at the rate of one-seventh of the weekly rate. [1386]

42.—(1) All increments in the scale of pay for constables (except any increments granted under special conditions as provided in Regulations 44 to 52) and all increments in the scales of pay for the higher ranks shall be granted automatically upon completion of the stated periods of service, reckoned from the constable's appointment to the force or her promotion



to higher rank, as the case may be, and the grant of any increment shall not be retarded or withheld on account of any offence or other cause except on a specific order of reduction in rank or pay by way of punishment for an offence as provided in the Regulations relating to discipline.

(2) Where a woman member of a police force is promoted, having served for three years or more in the same force with pay not less than the minimum pay appropriate to the rank to which she is promoted, she may be granted on promotion one increment in the scale of pay appropriate to that rank. [1387]

43.—(1) If a woman member of a police force transfers with the written consent of the chief officer of police to the same rank in another force, previous service which she is entitled to reckon for purposes of pay in the force from which she transfers shall (unless otherwise agreed upon) count, for purposes of reckoning her pay in the force which she joins, as follows :—

- (a) if she transfers to a force with the same or a lower scale of pay for her rank, the whole of her previous service in that rank shall count ;
- (b) if she transfers to a force with a higher scale of pay for her rank, such portion of her previous service in that rank shall count as will bring her pay in the force which she joins up to the amount she was receiving in the force from which she transfers.

(2) Where a woman member of a police force who has resigned from a police force subsequently joins the same or any other force, the police authority may, if they think fit, allow her service which she was entitled to reckon for purposes of pay in the force from which she resigned to be reckoned in whole or part for the purposes of pay in the force which she joins. [1388]

*Grant of special increments of pay for constables*

44. Subject to Regulations 51 and 54, a constable who is in receipt of pay according to the scale prescribed by these Regulations and who has passed the qualifying examinations for promotion in police duties and educational subjects, may, at any time after she has served for five years, be granted a special increment in her scale of pay if the chief officer of police is satisfied that she shows special zeal, intelligence and proficiency in the performance of her duties and that she is well conducted. [1389]

45. A constable who is in receipt of a special increment under Regulation 44 may, at any time after she has served for one year from the date of the grant of the special increment, be granted a second special increment in her scale of pay if the chief officer of police is satisfied that she shows special zeal, intelligence and proficiency in the performance of her duties and is well conducted :

Provided that a second special increment may be granted under this Regulation immediately on the grant of a special increment under Regulation 44 if the chief officer of police is satisfied that the constable would by then have qualified for a second special increment if she had not ceased to serve as a constable in such circumstances that section 1 of the Police and Firemen (War Service) Act, 1939, applied to her. [1390]

46. A constable who has been granted a special increment or increments shall be paid at the rate at which she would be paid on the scale in Regulation 40, if she had been appointed, in the case of a grant of one special increment, one year and, in the case of a grant of two special increments, two years before she was appointed. [1391]

*Grant of additional increments of pay for constables*

47.—(1) Subject to Regulations 51 and 54, a constable who has served for seventeen years or, having been granted a special increment which has not

been withdrawn, has served for sixteen years or, having been granted two special increments which have not been withdrawn, has served for fifteen years, may at any time after she has completed the appropriate qualifying period be granted an additional increment of 4s. a week in her pay if the chief officer of police is satisfied that she shows zeal and proficiency in the performance of her duties and that she is well conducted :

Provided that a constable may be granted an additional increment at any time after she has served for fifteen years, notwithstanding that she is not in receipt of the requisite number of special increments, if—

- (a) the chief officer of police is satisfied that she would be in receipt of the requisite number of special increments if she had not ceased to serve as a constable in such circumstances that section 1 of the Police and Firemen (War Service) Act, 1939, applied to her, and
- (b) she has passed the qualifying examination for promotion not later than two years after resuming service as a constable.

(2) For the purposes of this Regulation a constable shall be deemed to have served during any period which, by virtue of subsection (1) of section 2 of the Police and Firemen (War Service) Act, 1939, is to be treated as a period of approved service or would be so treated if the proviso to the said subsection did not apply. [1392]

48. A constable who is in receipt of an additional increment may, at any time after she has served for five years from the date when an additional increment was first granted to her exclusive of any period during which the additional increment was withdrawn from her, be granted a second additional increment of 4s. a week in her pay if the chief officer of police is satisfied that she shows zeal and proficiency in the performance of her duties and is well conducted :

Provided that—

- (a) a constable who has previously held a higher rank and has served for twenty-two years (including service in a relevant auxiliary capacity) may be granted a second additional increment after she has served for one year, instead of five years, from the date of the grant of the additional increment ;
- (b) a second additional increment shall not be granted to a constable from whom an additional increment has been withdrawn until a period of one year has elapsed from the date when an additional increment has last been granted to her. [1393]

49.—(1) As soon as a constable has served for the appropriate qualifying period under Regulation 47 or Regulation 48, the chief officer of police shall consider whether an additional increment or, as the case may be, a second additional increment should be granted to her.

(2) A constable who has acquired a right under paragraph (1) of this Regulation to have the question considered whether a grant should be made to her may apply to the chief officer of police, as soon as may be after the end of each period of one or more complete years from the date when she acquired the right, again to consider the question, and it shall accordingly again be considered.

(3) A constable from whom an additional increment or increments has or have been withdrawn under Regulation 50 may apply to the chief officer of police at the end of each period of one or more complete years from the date of the withdrawal to consider whether an additional increment should be granted to her, and it shall accordingly be considered.

(4) If on consideration under paragraph (1) or (2) of this Regulation no

grant is made, the constable shall, if she applies for the information, be informed in writing why no grant was made. [1394]

*General provisions as to grant and withdrawal of special and additional increments of pay for constables*

50. If the chief officer of police is of opinion—

- (a) that a constable in receipt of a special increment or increments is not showing special zeal, intelligence or proficiency in the performance of her duties or that she is not well conducted, or
- (b) that a constable in receipt of an additional increment or increments is not showing zeal or proficiency in the performance of her duties or that she is not well conducted,

the constable shall be given a written warning of the opinion of the chief officer of police, and if, at the end of a period of two months from the date of the warning or of such longer period as may be specified in the warning, the chief officer of police is still of the same opinion, the increment or increments shall be withdrawn :

Provided that if after the latest grant to the constable under Regulation 44, 45, 47 or 48—

- (a) the constable is guilty of any default for which she is punished by a fine of 20s. or any greater punishment, or
- (b) the constable is guilty, during any period of twelve months, of two defaults for which she is punished by punishments other than cautions, or
- (c) the constable is guilty of more than three defaults for which she is punished by punishments other than cautions,

the increment or increments may be withdrawn without warning. [1395]

51. No special or additional increment shall be granted to a constable from whom an increment or increments has or have been withdrawn under Regulation 50 until a period of one year has elapsed from the date of the withdrawal. [1396]

52. The grant or withdrawal of any increment under Regulations 44 to 51 inclusive to or from a constable in a borough police force shall be subject to confirmation by the watch committee. [1397]

*Service in a relevant auxiliary capacity*

54. For the purpose of applying the scale of pay for constables and of reckoning the qualifying period for the grant of a special or an additional increment there shall be added to the constable's service any period of service in a relevant auxiliary capacity. [1398]

ALLOWANCES

56. All allowances shall be non-pensionable and the amounts and conditions of payment shall be subject to the approval of the Secretary of State, and no allowances shall be paid except such as are prescribed in these Regulations or approved by the Secretary of State. [1399]

*Rent allowance*

56A.—(1) A police authority shall provide each woman member of a police force with a house or quarters free of rent and rates or shall pay her a rent allowance :

Provided that this paragraph shall not apply to a woman member of a police force who—

- (a) is married to a member of a police force and is living with him ; or
- (b) is on unpaid maternity leave.

(2) The rent allowance shall be paid at the same rate as that provided under Regulation 65 of the Police Regulations, 1947, for single men who are members of the same police force and of the same rank :

Provided that a police authority may, in special circumstances, authorise payment to an individual woman member of the police force of a rent allowance at the rate provided by the said Regulation 65 for married men of the same rank. [1400]

### *Compensatory grant*

56B.—(1) In the year commencing on the sixth day of April, 1947, and in each subsequent year, a woman member of a police force who has during the preceding year paid income tax in respect of a rent allowance or any compensatory grant mentioned in this paragraph paid or made to her in respect of her service in the force shall be paid a compensatory grant.

(2) The amount of the compensatory grant shall be equal to the amount by which the income tax in fact deducted during the preceding year according to the tax tables prepared or prescribed by the Commissioners of Inland Revenue from the member's emoluments in respect of her service in the force is increased by virtue of the inclusion in such emoluments of a rent allowance or any compensatory grant mentioned in this Regulation paid or made to her.

(3) The compensatory grant may, except in the circumstances described in paragraph (4) of this Regulation, be paid by such instalments throughout the year in which it is payable as the police authority may determine.

(4) Where a woman member of a police force leaves the force or dies whilst serving in the force she or, as the case may be, her personal representatives shall be paid the whole of the compensatory grant due to the member during that year and, in addition, shall be paid a further compensatory grant of an amount which bears the same proportion to the compensatory grant payable during that year as the period during which she has served during that year bears to the period during which she has served in the force during the preceding year.

(5) For the purposes of this Regulation—

- (a) the word “ year ” means the year commencing on the sixth day of April and ending on the following fifth day of April ; and
- (b) where a woman member of a police force has served more than once in the same force, references in this Regulation to service in the force shall be construed as references to her service therein since her last appointment thereto. [1401]

### *Uniform allowance*

57. A woman member of a police force of or above the rank of inspector who does duty in uniform but is not supplied with uniform by the police authority shall be paid in lieu a uniform allowance at a rate calculated to cover the cost of supplying and maintaining the required uniform. [1402]

### *Boot allowance*

58. A woman member of a police force who is not supplied with boots by the police authority shall be paid in lieu a boot allowance at the rate of 2s. weekly. [1403]

*Plain clothes allowance*

59. A woman member of a police force who is required to do duty in plain clothes for a period of not less than one week shall be paid a plain clothes allowance at that one of the following rates which is appropriate to her rank, namely—

Inspector .. .. .	£20 per annum
Sergeant or constable .. .. .	7s. 6d. a week :

Provided that a sergeant or constable—

- (a) who is required to do duty in plain clothes for not less than six days in any period of three months shall be paid a plain clothes allowance in respect of each day at a rate equal to one-sixth of the weekly rate ;
- (b) who is provided with overalls when doing duty in plain clothes or for any other reason is, in the opinion of the Secretary of State, put to substantially less or substantially more than the normal expense caused by wearing her own clothes on duty may be paid a plain clothes allowance at a rate approved by the Secretary of State. [1404]

*Detective allowance*

60. A woman member of a police force who is engaged in detective duties continuously for a period of one or more complete weeks shall be paid a detective allowance at the rate of—

Superintendents (where such a rank is adopted under Regulation 1) and inspectors .. .. .	15s. 0d. weekly
Sergeants and constables .. .. .	12s. 6d. weekly

or such higher or lower rate as may be approved in special circumstances by the Secretary of State. This allowance shall be payable in addition to a plain clothes allowance. [1405]

*Subsistence and lodging allowance*

61.—(1) A woman member of a police force of or below the rank of superintendent who, being retained on duty beyond her normal period of duty or being engaged on duty away from her usual place of duty, necessarily incurs additional expense to obtain food or lodging, shall—

- (a) if the period for which she is so retained or engaged exceeds one hour but does not exceed five hours, be paid a refreshment allowance ;
- (b) if the period for which she is so retained or engaged exceeds five hours, be paid a subsistence allowance ;
- (c) if the said expense includes expense of obtaining lodging, be paid a lodging allowance.

(2) Notwithstanding anything in the preceding paragraph a woman member of a police force of or below the rank of superintendent who satisfies the chief officer of police that during her normal period of duty she was, although not away from her usual place of duty, unable by reason of the exigencies of duty to obtain her meals in her usual way and that she necessarily incurred additional expense for the purpose, may be paid a refreshment allowance.

(3) The amount of the said allowances shall be according to the following scale :—

Description of Allowance	Super-intendents	Inspectors	Sergeants and Constables
Refreshment Allowance—			
(i) for one meal .. ..	3s. 6d.	3s. 0d.	2s. 6d.
(ii) for two meals .. ..	5s. 0d.	4s. 6d.	4s. 0d.
Subsistence Allowance : Period of retention or engagement—			
(i) over 5 hours and not exceeding 8 hours ..	5s. 0d.	4s. 6d.	4s. 0d.
(ii) over 8 hours and not exceeding 12 hours ..	7s. 6d.	6s. 6d.	5s. 6d.
(iii) over 12 hours and not exceeding 24 hours ..	10s. 6d.	9s. 0d.	8s. 0d.
(iv) over 24 hours—at the rate under (iii) above for each complete period of 24 hours retention or engagement, together with whichever is the appropriate amount under the preceding provisions of this scale for any excess over the aggregate of such complete periods.			
Lodging Allowance—			
For each night .. ..	10s. 6d.	9s. 6d.	8s. 6d.

Provided that—

- if a lodging allowance is payable as well as a subsistence allowance in respect of a total period of retention or engagement of sixteen hours or less, the subsistence allowance shall be of the amount appropriate to a retention or engagement for a period exceeding eight hours and not exceeding twelve hours ;
- if the chief officer of police is satisfied in any particular case that the amount of the allowances specified above is not sufficient to cover the actual expenses necessarily incurred, he may authorise payment of the difference ;
- if the chief officer of police is satisfied in any particular case that the amount of the allowances specified above would be excessive having regard to the additional expenses necessarily incurred, he may direct that the amount of the allowances shall be reduced to such an amount as he determines, not being less than the amount of such expenses ;
- if a woman member of a police force is so retained or engaged for a period exceeding one week, she may, if the chief officer of police is satisfied that the allowances specified above would be excessive, be granted in lieu thereof a weekly allowance at such lower rate as may be necessary to cover her reasonable expenses.

(4) Where the place of duty of a woman member of a police force has been temporarily changed, the expression in this Regulation “usual place of duty” shall, after such period from the date of change as the chief officer of police may determine, mean the temporary place of duty. [1406]

62. Where a woman member of a police force of or below the rank of inspector is required to do duty away from her usual place of duty she shall be given an advance to cover, as far as practicable, any expenses which she will probably incur. [1407]

#### *Detachment duty allowance*

63.—(1) Where a woman member of a police force is employed as part of a detachment lent in aid of another police force in circumstances that involve

her sleeping away from home, a detachment duty allowance shall be payable in consideration of such duty at the rate of—

- 8s. 0d. daily for a superintendent
- 6s. 6d. „ „ an inspector
- 5s. 6d. „ „ a sergeant
- 4s. 6d. „ „ a constable

during the period of absence. When lodging and meals are not provided by the aided police authority, this allowance shall be payable in addition to any subsistence or lodging allowance to which the woman may be entitled.

(2) A detachment duty allowance at the foregoing rates may be paid where women members of the metropolitan police or any county police force are employed for a period of three or more complete days on detachment duty within the police district of the force to which they belong, *i.e.* as part of a detachment reinforcing another division, sub-division or section, in circumstances that involve their sleeping away from home. [1408]

#### *Temporary duty allowance*

64. Where a constable is required to perform the duties of a sergeant, or a sergeant is required to perform the duties of an inspector, either to fill a temporary vacancy or for some other special purpose and for a continuous period exceeding two weeks, she shall be granted in respect of such service, after the first two weeks, an allowance in addition to her pay at a rate equal to the difference between her ordinary rate of pay and the lowest rate of pay of the rank in which she is temporarily acting. [1409]

#### *Miscellaneous provisions as to allowances*

65. An allowance may be paid, of such amount and under such conditions as may be approved by the Secretary of State on the recommendation of the police authority, in respect of recurring escort duty or other specific duties involving recurring detention on duty beyond the normal period and not covered by any other payment. [1410]

66. A woman member of a police force employed at the expense of a private person or persons shall be entitled to such payments as are provided in these Regulations by way of subsistence or lodging allowance or refreshment allowance or as payment in respect of extended hours of duty, but shall not receive any special allowance in consideration of the purpose for which she is employed. All payments so due shall be made by the police authority and recovered from the person or persons for whose benefit the woman is employed. [1411]

67. If a woman who is regularly in receipt of a plain clothes allowance or detective allowance or any other allowance to meet an expense which ceases during her absence from duty is placed upon the sick list or is on maternity leave, the allowance shall be payable during her absence from duty up to a period of one month, but thereafter, during the remainder of her absence from duty, payment may be suspended at the discretion of the chief officer of police, subject, in a borough police force, to the approval of the watch committee :

Provided that the boot allowance shall not cease to be payable during a period of sick leave. [1412]

#### CLOTHING, EQUIPMENT AND NECESSARIES

68. Every woman member of a police force shall provide herself with clothing which is sufficient for her health and suitable to a person employed in the police service, and shall be in possession of two pairs of boots suitable for duty. [1413]

69. All articles of uniform, clothing and equipment necessary for the performance of police duty shall be provided by the police authority for all



ranks free of cost to the individual member of the force, provided that officers of and above the rank of inspector may be paid a money allowance in lieu. [1414]

70. Issues of uniform shall, so far as circumstances permit, be made at stated periods, but where particular duties, or the duties of a particular woman, entail greater or less wear of all articles or of any particular article of uniform, the issue to a particular woman, or the issue of any particular garment, may be made on requisition approved by the chief officer of police. Clothing for particular duties may be issued on requisition. [1415]

71. Subject to any modifications approved by the Secretary of State, the issues of articles of uniform and equipment for sergeants and constables shall be as follows :—

Article	Issue	Period of Wear	Number in Possession
Body Coat ( <i>i.e.</i> tunic, frock coat, patrol jacket, winter jacket, summer jacket, summer serge, as the case may be)	Annual	Two years or four years (according to whether one, two or more patterns of coat are supplied)	Two of each
(If tunics or other full dress coats are reserved for ceremonial duty only, their issue shall be on requisition over and above the periodical issue.)			
Skirt .. .. .	Annual	Four years	Four
(Where more than one material is provided, the issue shall be alternated to meet the demands of use.)			
Greatcoat .. .. .	Every two years	Four years	Two
Headdress .. .. .	Issue to be as required		Two

(Where a second pattern of headdress is supplied, the issue shall be alternated to meet the demands of use.)

Where boots are provided by the police authority for the purposes of duty, the issue shall be at the rate of two pairs annually, or as may be approved by the Secretary of State. [1416]

72. The following articles of equipment shall be supplied as circumstances require :—

Armlet and buckle  
 Button brushes and button stick  
 Cap strap and sling  
 Gloves  
 Handcuffs  
 Haversack or kit bag  
 Lamp  
 Leggings  
 Overalls  
 Pocket notebook  
 Shirts, collars and ties  
 Truncheon  
 Waist-belt  
 Waterproof coat or cape  
 Warrant card  
 Whistle and chain. [1417]

73. All clothing and articles of equipment issued are for use in the performance of duty; they shall not become the property of the individual member of the force and must be delivered up by her on her leaving the force. [1418]

74. All garments supplied by the police authority (but not boots) shall be returned to store on being replaced at the expiry of the prescribed period of wear, and the amounts realised by their sale shall be paid to the police fund :

Provided that, if the police authority so direct, cast garments may be retained upon a payment to be fixed by the police authority, the amount of which shall be assessed according to the amount likely to be realised by the sale of the garments. [1419]

75. Replacement of lost, damaged, faulty or ill-fitting garments, and repairs (other than minor repairs which the woman can satisfactorily do herself) shall be made or done at the expense of the police authority, except in the case of loss or damage caused by the woman's default. [1420]

76. Part-worn clothing returned to store shall not be issued to another woman until it has been properly cleaned and is in serviceable condition. [1421]

#### MEDICAL ATTENDANCE AND STOPPAGES FROM PAY

77. A woman member of a police force shall not be entitled to be absent from duty on account of injury or illness except on the authority of a medical officer for the force or other medical practitioner appointed or approved by the police authority :

Provided that where, owing to the absence of the woman on leave or for other unavoidable cause, the authority of a medical officer for the force cannot be given, the certificate of some other medical practitioner may be accepted in lieu by the police authority. [1422]

78. Where a woman member of a police force who is not incapacitated for duty by illness is relieved of duty on account of her having been in contact with infectious disease, without her own default, she shall not be liable to any deduction from pay or from annual or other leave in respect of such absence from duty. [1423]

79.—(1) The police authority shall provide for every woman member of the police force when incapacitated for duty by injury or illness without her own default free medical attendance by a medical officer for the force or other medical practitioner appointed or approved by the police authority, such attention to include the supply of necessary medicines and drugs :

Provided that—

- (i) nothing in this paragraph shall prevent a woman who receives treatment in a hospital from being required to contribute towards the cost of her maintenance in the hospital and any such contribution may be deducted from her pay ;
- (ii) if a woman member of a police force is certified by a medical officer for the force or other medical practitioner appointed or approved by the police authority to require special treatment, it shall be provided without cost to her if her incapacity was due to an injury received in the execution of her duty without her own default, and otherwise the provision of such special treatment shall be at the discretion of the police authority ;
- (iii) nothing in this paragraph shall compel a police authority to provide medical attendance during a period of unpaid maternity leave or, during a period of paid maternity leave, to provide medical attendance in respect of injury or illness which is solely or mainly due to pregnancy or childbirth or their after effects.

(2) Where a woman member of a police force has been granted a pension in respect of an injury received in the execution of her duty without her own default, the police authority may provide, without cost to the pensioner, such medical attendance, by a medical officer for the force or other medical practitioner appointed or approved by the police authority, as the pensioner may require by reason of the injury in respect of which she retired or such special treatment as she may require as a result of the injury aforesaid.

(3) The police authority shall provide free dental treatment, including the provision of a denture or dentures where necessary, for every woman member of the police force in whose case a medical officer for the force or other medical practitioner or registered dentist appointed or approved by the police authority certifies that such treatment or denture is necessary for the woman's health and continued efficiency in the police service and that the necessity does not arise from her own neglect or default :

Provided that nothing in this paragraph shall compel a police authority to provide dental treatment during a period of unpaid maternity leave or, during a period of paid maternity leave, to provide dental treatment which is rendered necessary or desirable solely or mainly by pregnancy or childbirth or their after effects. [1424]

80A.—(1) During the maternity period a married woman member of a police force shall not be entitled to any sick leave in respect of any injury, illness or incapacity for duty which is solely or mainly due to pregnancy or childbirth or their after effects but shall be entitled to take maternity leave for the whole or any part or parts of the period of which, subject to paragraph (2) of this Regulation, three months shall be paid maternity leave and the remainder unpaid maternity leave.

(2) A married woman member of a police force shall not be entitled to more than three months' paid maternity leave during any period of twelve months or to any paid maternity leave before the end of her period of probation.

(3) No deductions in respect of any period or periods of paid maternity leave shall be made from the service of a married woman member of a police force in calculating her period of approved service for the purposes of the Police Pensions Act, 1921.

(4) In calculating the service of a married woman member of a police force for the purposes of probation, promotion or increments in pay any period or periods of unpaid maternity leave shall be disregarded.

(5) In this Regulation the maternity period means, in relation to a married woman member of a police force who is certified by a medical practitioner approved by the police authority to be pregnant, the period beginning six months before the date which is estimated by the said medical practitioner as being the probable date of birth and ending nine months after the birth of the child. [1425]

81. In reckoning the approved service of a woman member of a police force no deduction from service shall be made in respect of duly authorised absence from duty occasioned by sickness, unless a medical officer for the force or other medical practitioner certifies that the woman has brought about or contributed to the sickness by her own default or vicious habits or unless she is already absent on unpaid maternity leave. [1426]

#### MISCELLANEOUS PROVISIONS

81A.—(1) Subject to the provisions of paragraph (3) hereof, a woman member of a county police force or a combined police force who, having been a member of the police force of a borough comprised in the county of the combined area, has been transferred to the county police force or the combined police force by or under the provisions of the Police Act, 1946,

shall not be assigned to duties which in the opinion of the Secretary of State make it necessary for her to establish her home outside the borough.

(2) This Regulation shall apply in relation to a woman member of a county police force or a combined police force who has been a member of the police force of a borough comprised in the county or the combined area and either reverts to the county police force or the combined police force under subsection (1) of section 2 of the Police (Overseas Service) Act, 1945, as applied by subsection (2) of section 14 of the Police Act, 1946, or, having been a person to whom section 1 of the Police and Firemen (War Service) Act, 1939, applied, became a member of the county police force or, as the case may be, the combined police force without having been deemed under subsection (2) of section 2 of the last-named Act to have retired, in the same manner as it applies to a member of a county police force or a combined police force who has been transferred thereto by or under the provisions of the Police Act, 1946.

(3) This Regulation shall not apply to such a woman member of a county police force or combined police force as described above if, since she became a member of the police force of the borough—

- (a) she has retired, resigned or been dismissed from a police force, has been deemed to have retired from a police force under subsection (2) of section 2 of the Police and Firemen (War Service) Act, 1939, or has engaged for a period of overseas service in such a manner that she has not acquired, under subsection (1) of section 2 of the Police (Overseas Service) Act, 1945, a right of reverter or, having acquired the said right of reverter, has lost or not availed herself of the said right or has removed, within the meaning of subsection (1) of section 8 of the Police Pensions Act, 1921, from one police force to another ;
- (b) the police force of the borough has become subject to a consolidation agreement under section 14 of the County Police Act, 1840 ; or
- (c) she has given written notice to the chief officer of police of any county police force or combined police force of which she was at the time a member of her desire that this Regulation should cease to apply to her.

(4) Where a woman member of a county police force or combined police force has been a member of the police force of more than one borough comprised in the county or combined area references in this Regulation to the police force of such a borough shall, in relation to her, be construed as references to the police force of such borough of which she was last a member. [1427]

**81B.** For the purposes of these Regulations service in a police force from which a constable is transferred by or under the Police Act, 1946, and service in the force to which she is so transferred shall be treated as if it were service in the same force. [1428]

**82.**—(1) (a) In these Regulations a reference to service in a relevant auxiliary capacity is to be taken as a reference to all service as a member of Class A of the Women's Auxiliary Police Corps and, while the constable in question was not in receipt of a pension under the Police Pensions Acts, 1921 and 1926, to all whole-time paid service after the third day of September, 1939, as a member of the first class of the Police Reserve and while the constable in question was assigned to duties which were wholly or mainly street patrol duties, motor patrol duties or outside detective duties, to whole-time paid service as a member of the Women's Auxiliary Police Corps, after the third day of September, 1939, and before the first day of April, 1945 :

Provided that for the purpose of reckoning the length of such whole-time

paid service account shall only be taken of each complete calendar month during the whole of which the constable in question was assigned to such duties.

(b) In connection with any reference to service in a relevant auxiliary-capacity a reference to service in a force shall be taken to include a reference to service as a member of the Women's Auxiliary Police Corps under the directions of the chief officer of police of that force.

(c) In this paragraph whole-time paid service includes all leave with pay, any period of leave without full pay not exceeding seven days in duration and any period of absence or suspension with full pay or the equivalent of full pay and for this purpose leave shall not be taken to be leave without full pay by reason only that there is deducted from the constable's pay the amount of benefits under the National Health Insurance Acts, 1936 to 1941, of payments made under any scheme made by the Minister of Pensions under the Personal Injuries (Emergency Provisions) Act, 1939, or for any weekly payments under the Workmen's Compensation Acts, 1925 to 1945.

(2) Any reference in these Regulations to a county police force, a borough police force or a watch committee shall, except in Regulation 81A, include a reference respectively to a combined force constituted by a county scheme, a combined force constituted by a borough scheme or a police authority constituted by a borough scheme. [1429]

84.—(1) In these Regulations a reference to a Regulation shall, unless the contrary intention appears, be construed as a reference to a Regulation contained in these Regulations.

(2) The Interpretation Act, 1889, shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament. [1430]

86. These Regulations shall apply to all police forces in England and Wales to which the Police Act, 1919, applies, and in which women are employed as members of the force. [1431]

87.—(1) The Regulations set out in the Second Schedule to these Regulations are hereby revoked.

(2) Section 38 of the Interpretation Act, 1889, shall apply as if these Regulations were an Act of Parliament and as if any Regulations revoked by these Regulations were Acts of Parliament repealed by an Act of Parliament.

(3) Any appointment, grant, withdrawal of a grant or publication made or approval, certificate, consent or notice given or any record kept or other thing done under any Regulation revoked by these Regulations shall not be invalidated by the revocation effected by paragraph (1) of this Regulation, but shall, in so far as it could have been made, given, kept or done under a provision of these Regulations, have effect as if it had been made, given, kept or done under that provision.

(4) Any proceedings initiated, suspension from duty ordered or punishment imposed in respect of an offence or alleged offence against the code of offences against discipline for any police force shall be deemed to have been initiated, ordered or imposed under these Regulations.

(5) Any reference in any document to any Regulations revoked by these Regulations or any provision thereof shall, unless the contrary intention appears, be construed as a reference to these Regulations or the corresponding provisions of these Regulations. [1432]

88.—(1) These Regulations may be cited as the Police (Women) Regulations, 1947.

(2) These Regulations shall come into force on the first day of August, 1947. [1433]

## FIRST SCHEDULE

## DUTIES WHICH MAY BE ASSIGNED TO WOMEN MEMBERS OF A POLICE FORCE

Patrol duty.

Duties in connection with women and children reported missing, found ill, injured, destitute, or homeless, and those who have been the victims of sexual offences, or are in immoral surroundings.

Taking statements from women and children in cases of sexual offences.

Duties in connection with the conveyance of women and children to or from hospitals, poor-law institutions, police stations, prisons, remand homes, and approved schools.

Watching female prisoners or women who have attempted suicide detained in hospitals, etc.

Attendance on women and children in court.

Searching and attending female prisoners.

Clerical work.

Plain clothes duty and detective work. [1434]

## SECOND SCHEDULE

## REGULATIONS REVOKED

The Police (Women) Regulations of July 24, 1933 (S. R. & O., 1933, No. 722).

The Police (Women) Regulations of June 28, 1934 (S. R. & O., 1934, No. 661).

The Police (Women) Regulations of June 24, 1935 (S. R. & O., 1935, No. 591).

The Police (Women) Regulations of July 10, 1939 (S. R. & O., 1939, No. 781).

The Police (Women) Regulations of September 14, 1940 (S. R. & O., 1940, No. 1705).

The Police (Women) Regulations of July 21, 1941 (S. R. & O., 1941, No. 1123).

The Police (Women) Regulations of December 17, 1941 (S. R. & O., 1941, No. 2103).

The Police (Women) Regulations of July 1, 1942 (S. R. & O., 1942, No. 1346).

The Police (Women) Regulations of August 31, 1942 (S. R. & O., 1942, No. 1809).

The Police (Women) Regulations of March 5, 1943 (S. R. & O., 1943, No. 409).

The Police (Women) Regulations of August 23, 1943 (S. R. & O., 1943, No. 1298).

The Police (Women) Regulations of March 23, 1944 (S. R. & O., 1944, No. 437).

The Police (Women) Regulations of August 28, 1944 (S. R. & O., 1944, No. 1023).

The Police (Women) Regulations of November 4, 1944 (S. R. & O., 1944, No. 1247).

The Police (Women) Regulations of December 22, 1944 (S. R. & O., 1944, No. 1477).

The Police (Women) Regulations of March 27, 1945 (S. R. & O., 1945, No. 352).

The Police (Women) Regulations of December 21, 1945 (S. R. & O., 1945, No. 1652).

The Police (Women) Regulations of February 22, 1946 (S. R. & O., 1946, No. 271).

The Police (Women) Regulations of June 27, 1946 (S. R. & O., 1946, No. 952).

The Police (Women) Regulations of November 6, 1946 (S. R. & O., 1946, No. 1799). [1435]

## EXPLANATORY NOTE

*(This Note is not part of the Regulations, but is intended to indicate their general purport.)*

*These Regulations consolidate, with amendments, the Regulations set out in the Second Schedule. The principal amendments are in Regulations 4 (which relates to disqualification from membership of a police force in connection with the carrying on of a business), 29 and 30 (which relate to "time-off" for excess duty and payments in lieu of "time-off"), 47 and 48 (which relate to additional increments of pay) and 63 (which relates to detachment duty allowance).*

## METROPOLITAN POLICE STAFFS SUPERANNUATION (UNESTABLISHED SERVICE) ORDER, 1947

*S. R. & O.*, 1947, No. 1696

*August 6, 1946*

Whereas under the Metropolitan Police Staff (Superannuation) Acts, 1875 to 1931, both as originally enacted and as applied by section five of the Metropolitan Police Courts Act, 1897, and as extended by the Superannuation (Various Services) Act, 1938, the Secretary of State is authorised to make by Order regulations respecting the grant to officers to whom those Acts apply and to their legal personal representatives, widows and dependants of superannuation allowances, compensations, gratuities or other allowances on the like principles and conditions as are for the time being in force with respect to persons in the Civil Service of the State :

Now, therefore, I, the Right Honourable James Chuter Ede, one of His Majesty's Principal Secretaries of State, in pursuance of the said Acts, do, by this Order, make the following regulations :—

1. This Order may be cited as the Metropolitan Police Staffs Superannuation (Unestablished Service) Order, 1947. [1436]

2.—(1) In this Order—

- (i) the expression “ police service ” means service, the salary in respect of which is paid out of the Metropolitan Police Fund,
  - (a) under the Commissioner of Police of the Metropolis or under the Receiver for the Metropolitan Police District, otherwise than as a constable ; or
  - (b) as a member of the staff of the Metropolitan Police Courts ;
- (ii) the expression “ service in an established capacity ” means police service in a pensionable situation ;
- (iii) the expression “ service in an unestablished capacity ” means police service otherwise than in a pensionable situation, being service to which the person serving is required to devote his whole time ;
- (iv) the expression “ the Orders ” means the Orders, other than this Order, made by the Secretary of State in pursuance of the powers conferred on him by the Metropolitan Police Staff (Superannuation) Act, 1875, both as originally enacted and as amended, applied and extended by any other Acts ; and any reference to “ the Order ” means that one of the Orders made on the date specified.

(2) The Interpretation Act, 1889, shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament. [1437]

3. Subject to the provisions of this Order, where any person at the time of his appointment to service in an established capacity is or was in service in an unestablished capacity and his continuous service in an unestablished capacity immediately before his said appointment began before the eighth day of April, 1943, so much of his said continuous service in an unestablished capacity as was performed after the thirty-first day of December, 1918, shall, as to one-half of the period thereof, be reckoned as service in an established capacity for the purposes of the Orders :

Provided that—

- (i) for the purpose of computing, in the case of any person, the service to be reckoned as aforesaid, no account shall be taken of any period for which that person has served before attaining the age of eighteen years ; and



- (ii) this Article shall not apply to any person in respect of whose service the Secretary of State, by virtue of Article 2 of the Metropolitan Police Staffs Superannuation (Unestablished Service) Order, 1943, has made or makes an award more favourable than an award that he would, but for this proviso, have been empowered to make under this Article. [1438]

4.—(1) Subject to the provisions of this Order, any person to whom the provisions of the Metropolitan Police Staffs Superannuation (Unestablished Service) Order, 1943, or of Article 3 of this Order would have applied but for the fact that he was not appointed to service in an established capacity solely on the ground that by reason of his age he would not, if so appointed, have become eligible to receive a superannuation allowance on retirement at the retiring age, shall be treated for the purposes of the Orders as if he had been appointed to service in an established capacity on the day when, but for the existence of that ground, he would have been so appointed, and the said Metropolitan Police Staffs Superannuation (Unestablished Service) Order, 1943, or, as the case may be, Article 3 of this Order shall apply to that person accordingly.

(2) Any award under the Orders to a person referred to in paragraph (1) of this Article, being a woman who, under that paragraph, falls to be treated as if she had been appointed to service in an established capacity on a date before the fourteenth day of June, 1939, shall be calculated in accordance with the provisions of the Order made on the 1st January, 1876 :

Provided that if any such person elects, within three months of the sending to her of a notice of election, that the said award shall be calculated in accordance with the provisions of the Order made on the 22nd March, 1910, the award shall be so calculated, and the amount of additional allowance payable on retirement shall be increased by one-half per cent. in respect of each completed year before the said fourteenth day of June, 1939, which may be reckoned, for the purposes of the Orders, as service in an established capacity.

(3) No election under this Article shall be made in respect of the service of a deceased person. [1439]

5.—(1) Directions of the Secretary of State issued under Article 4 of the Metropolitan Police Staffs Superannuation (Unestablished Service) Order, 1943, shall apply for the purposes of computing the service in an unestablished capacity of any person to whom this Order applies.

(2) The method of computing awards set out in Part II of the Order made on the 14th June, 1939, shall apply to awards granted by virtue of this Order other than awards under the Order made on the 1st January, 1876, to persons referred to in paragraph (2) of Article 4 of this Order. [1440]

6. Elections made under this Order shall be made in the manner approved by the Secretary of State for that purpose or in a manner similar thereto. [1441]

7.—(1) Subject to the provisions of this Order, payment of any sum awarded by virtue of this Order shall be made to the person entitled, at the date of the retirement or death of the officer in respect of whose service the award was made (which officer is hereafter in this Article referred to as "the pensioner"), to the payment of any award specified in paragraph (2) of this Article, but if that person is dead or, within six months or such longer period as the Secretary of State may, in any particular case, determine after the making of an award under this Order, cannot be found, payment shall be made—

- (a) to the pensioner's wife (including a dependant of the pensioner not married to him but living with him as his wife), or husband, as the case may be ; or if there is no such person,

- (b) to and among the children or grandchildren of the pensioner ; or if there are no such children or grandchildren,
- (c) to and among the parents or grandparents if then living of the pensioner,

so, however, that the Secretary of State may, in any case the circumstances of which appear to him to be exceptional, whether for reasons of hardship or otherwise, make any such payment to or among any of the persons referred to in sub-paragraphs (a), (b) and (c) of this paragraph or any other person appearing to him to be or to have been a dependant of the pensioner.

(2) The awards referred to in paragraph (1) of this Article are—

- (a) additional allowances under paragraph (2) of Article 2 of the Order made on the 22nd March, 1910 ;
- (b) gratuities under Article 3 of the said last mentioned Order ;
- (c) gratuities under Article 6 of the Order made on the 1st January, 1876 ; and
- (d) compassionate gratuities under Article 1 of the Order made on the 9th March, 1933. [1442]

8.—(1) Where any person to whom this Order applies has retired and, by virtue of this Order is granted any annual superannuation, compensation or retiring allowance under the Orders, that person may not surrender any part thereof to any other person.

(2) Where any person to whom this Order applies is in receipt of any annual superannuation, compensation or retiring allowance granted to him under the Orders and has surrendered any part thereof pursuant to the provisions of the Order made on the 28th August, 1939, and where, by virtue of this Order, that person is granted any further such allowance, there shall be no adjustment of the part of the allowance so surrendered. [1443]

9.—(1) Where any person to whom this Order applies has received a compassionate gratuity under Article 1 of the Order made on the 9th March, 1933, a gratuity under Article 6 of the Order made on the 1st January, 1876, or an additional allowance under paragraph (2) of Article 2 of the Order made on the 22nd March, 1910, and, by virtue of this Order, is granted an award under the Orders, that award shall be adjusted by the deduction therefrom of the amount of the said gratuity or allowance, and no payment shall be made in respect of the said award unless and until the amount which, but for the provisions of this paragraph, would have been payable in respect of the said award exceeds the amount of the said gratuity or allowance.

(2) Where a person to whom this Order applies has been granted a compassionate gratuity under Article 1 of the Order made on the 9th March, 1933, and has subsequently re-entered upon service in an unestablished capacity and has not repaid his gratuity solely on the ground that one or more of his periods of service in an unestablished capacity would not be reckoned under Article 2 of the Metropolitan Police Staffs Superannuation (Unestablished Service) Order, 1943, for the purposes of the Orders, then, if, by virtue of this Order, any such period may now be reckoned for those purposes, that person may repay that gratuity for the purposes aforesaid. [1444]

10. Where a married woman who before her marriage was in service in an established capacity has in consequence of her marriage been transferred to service in an unestablished capacity, and no gratuity was paid to her on her marriage in respect of her service in an established capacity, then, for the purposes of Article 1 of the Order made on the 9th March, 1933 (which provides for gratuities on the retirement of persons not entitled to super-

annuation allowances), her said service in an established capacity shall be treated as if it were service in the capacity to which she was transferred as aforesaid. [1445]

11.—(1) Subject to the provisions of this Order, any superannuation allowance payable by virtue of this Order shall be payable from the first day of April, 1946, or from such later date as, in accordance with the provisions of this Order, the person becomes entitled thereto.

(2) Subject to the provisions of paragraph (1) of this Article, the provisions of this Order shall apply in the case of persons retiring or dying as well before as after the date of this Order, and any payment under the Orders made before the date of this Order shall be adjusted accordingly. [1446]

\* \* \* \* \*

### EXPLANATORY NOTE

*(This Note is not part of the Order, but is intended to indicate its general purport.)*

*This Order relates to the superannuation awards which can be made to members of the civil staffs employed under the Commissioner of Police of the Metropolis and the Receiver for the Metropolitan Police District and members of the staffs of the Metropolitan Police Courts. Under the Metropolitan Police Staffs Superannuation (Unestablished Service) Order, 1943, members of these staffs who enter on continuous non-pensionable service after the date of that Order and are later made pensionable are enabled to reckon half of their non-pensionable service performed after they attain the age of eighteen years for pension purposes.*

*The main purposes of the Order are—*

- (a) to enable half of the non-pensionable service performed after they attain the age of eighteen years by members of these staffs at any time since the thirty-first day of December, 1918, to be reckoned,*
- (b) to enable pensions to be awarded in certain circumstances to members of these staffs who were “age barred,” and*
- (c) to enable pensionable service to be reckoned for the purpose of gratuities in the case of certain women transferred in consequence of their marriage from pensionable to non-pensionable service.*

*Payments of pensions (or of increased pensions) are to be made as from the first day of April, 1946, or the date of retirement, whichever is the later.*

## WOMEN'S AUXILIARY POLICE CORPS RULES, 1947

*S. R. & O., 1947, No. 1991*

*September 8, 1947*

In pursuance of the power conferred upon me by Regulation 40AC of the Defence (General) Regulations, 1939, as having effect by virtue of the Emergency Laws (Transitional Provisions) Act, 1946, I [i.e. the Secretary of State] hereby make the following Rules amending the Women's Auxiliary Police Corps Rules, 1945, as subsequently amended:—

1. In paragraph (1) of Rule 47 after the words “her children shall be entitled to allowances or gratuities, and such” there shall be inserted the word “pensions”. [1447]

2. In sub-paragraph (b) of paragraph (2) of Rule 47 for the figure “62s. 6d.” there shall be substituted the figure “94s.” [1448]

3.—(1) These Rules may be cited as the Women's Auxiliary Police Corps Rules, 1947.

(2) These Rules shall come into force on the 15th day of September, 1947. [1449]

\* \* \* \* \*

### EXPLANATORY NOTE

*(This Note is not part of the Rules, but is intended to indicate their general purport.)*

*Rule 1 is a drafting point and is not a substantial amendment. Rule 2 increases the notional rate of pay for grants of pensions, allowance or gratuities for women in Class C of the Women's Auxiliary Police Corps.*

## POLICE (NO. 2) REGULATIONS, 1947

S. R. & O., 1947, No. 2005

September 17, 1947

I, the Right Honourable James Chuter Ede, one of His Majesty's Principal Secretaries of State, in pursuance of the powers conferred on me by section four of the Police Act, 1919, hereby make the following Regulations:—

1. In paragraph (1) of Regulation 20A of the Police Regulations, 1947, for the words "another serving member of the force" there shall be substituted the words "a serving member of a police force". [1450]

2. In Regulation 74 of the said Regulations for the words "Where a constable is required to perform the duties of a sergeant, or a sergeant is required to perform the duties of a station sergeant, sub-inspector or inspector, or a station sergeant or sub-inspector is required to perform the duties of an inspector" there shall be substituted the words "Where a member of a police force of a rank below that of superintendent is required to perform the duties of a member of a force holding a higher rank than his own". [1451]

3.—(1) In paragraph (b) of Regulation 94 of the said Regulations the words "Regulations 28 to 32 (which relate to promotion) and" shall be omitted.

(2) At the end of Regulation 94 of the said Regulations there shall be added the following paragraph:—

“(d) notwithstanding Regulation 27, paragraph (4) of Regulation 29, Regulations 30 and 32, promotion from constable to sergeant and from sergeant to station sergeant in the metropolitan police may be by competitive examination in accordance with provisions approved by the Secretary of State and published in the General Orders of the force, and those provisions may also lay down the number of times and frequency with which a candidate may sit for the competitive examination and the qualifying examination set out in Regulation 29.” [1452]

4.—(1) These Regulations may be cited as the Police (No. 2) Regulations, 1947.

(2) These Regulations shall come into force on the first day of October, 1947. [1453]

\* \* \* \* \*

## EXPLANATORY NOTE

*(This Note is not part of the Regulations, but is intended to indicate their general purport.)*

*Regulation 1 permits a member of a police force accused of an offence against discipline to select a serving member of any police force to assist him in the disciplinary proceedings.*

*Regulation 2 extends the temporary duty allowance to all ranks below that of superintendent.*

*Regulation 3 provides for competitive examinations for promotion up to the rank of station sergeant in the metropolitan police.*

## POLICE (WOMEN) (NO. 2) REGULATIONS, 1947

S. R. & O., 1947, No. 2006

September 17, 1947

I, the Right Honourable James Chuter Ede, one of His Majesty's Principal Secretaries of State, in pursuance of the powers conferred on me by section four of the Police Act, 1919, hereby make the following Regulations :—

1. In paragraph (1) of Regulation 14A of the Police (Women) Regulations, 1947, for the words "another serving member of the force" there shall be substituted the words "a serving member of a police force". [1454]

2.—(1) These Regulations may be cited as the Police (Women) (No. 2) Regulations, 1947.

(2) These Regulations shall come into force on the first day of October, 1947. [1455]

\* \* \* \* \*

## EXPLANATORY NOTE

*(This Note is not part of the Regulations, but is intended to indicate their general purport.)*

*Regulation 1 permits a woman member of a police force accused of an offence against discipline to select a serving member of any police force to assist her in the disciplinary proceedings.*

## CASES

*Trespass—False imprisonment—Need to make charge known to person arrested—Arrest without warrant—Charge of unlawful possession under local Act—Charge not justifying original arrest or continuing detention under arrest—Reasonable and probable cause for suspecting felony—Dismissal of charge at police court—Re-arrest inside the court—Subsequent charge of larceny—Charge dismissed—Liverpool Corporation Act, 1921 (c. lxxiv), ss. 507, 513.*

On August 31, 1942, the respondent was arrested by the appellants, who were police officers, and charged under the Liverpool Corporation Act, 1921, s. 507, with unlawful possession of a bale of cloth. Admittedly, the arrest was not authorised by the section, but the police *bona fide* and on reasonable grounds believed that he had stolen the cloth. He was detained in custody until the following day when he was brought before the magistrate and remanded in custody until September 8. Thereafter he was

remanded on bail until September 15. At the hearing the respondent was discharged, it being stated that the Leicester police had decided to prosecute him for larceny, and before leaving the court he was re-arrested. Later in the day, the Leicester police, charging him with larceny, took him to Leicester with a view to his committal for trial, but the charge was dismissed by the magistrates. The respondent claimed damages for false imprisonment and trespass to the person. Although the offence of unlawful possession under the Act of 1921 was one for which in the circumstances there was no power of arrest without warrant, the appellants pleaded that their action was justified because they had reasonable and probable cause for suspecting, and in fact, suspected, that the respondent had stolen or feloniously received the bale of cloth :—

*Held*: (i) an arrest without warrant, either by a policeman or by a private person, can be justified only if it is an arrest on a charge which is made known to the person arrested unless the circumstances are such that the person arrested must know the substance of the alleged offence (*e.g.* where the alleged wrongdoer is caught red-handed), or where he forcibly resists arrest; the circumstances of the present case were not covered by any such qualification; and, therefore, the initial arrest and imprisonment were unlawful and constituted false imprisonment.

(ii) as regards the re-arrest on September 15, the respondent knew what was the alleged felony in respect of which he was being detained, and so, although it took place inside the court, this arrest was lawful.—*CHRISTIE v. LEACHINSKY*, [1947] A. C. 573; [1947] 1 All E. R. 567; [1947] L. J. R. 757; 176 L. T. 443; 111 J. P. 224; 63 T. L. R. 231; 45 L. G. R. 201, H. L. [1456]

*Police—Metropolitan Police Force—Summary dismissal—Power of Commissioner—Officer convicted of theft—Metropolitan Police Act, 1829 (c. 44), s. 5—General Orders of Metropolitan Police Force, s. 5 (9).*

*Limitation of actions—Public authority—Commissioner of Metropolitan Police—Dismissal of police officer—Claim by officer that dismissal illegal—Limitation Act, 1939 (c. 21), s. 21.*

In September, 1942, the plaintiff, an inspector in the Metropolitan Police Force, pleaded guilty to three charges of stealing and was sentenced to a month's imprisonment. He was forthwith dismissed from the Force by the Commissioner of Police without being informed in writing on a misconduct form of the charge against him, without being supplied with copies of the reports on which the charge was founded, without being invited to give his explanation in writing or being given an opportunity of putting forward his explanation personally, and without a disciplinary board. He was subsequently allowed to appeal out of time against his dismissal to the Home Secretary, by whose order, made in March, 1943, he was reinstated in the Force with the rank of constable. In March, 1946, he brought an action for a declaration that he held the rank of inspector and had been entitled to the privileges and emoluments attaching thereto since he was dismissed, on the grounds, *inter alia*, that the statutory requirements of the Police Act, 1919, and of regulations made under s. 4 of that Act had not been complied with in relation to his dismissal :—

*Held*: (i) the Commissioner had power under the Metropolitan Police Act, 1829, s. 5, and the General Orders of the Metropolitan Police Force, s. 5 (9), without following the ordinary disciplinary procedure to dismiss the plaintiff on the ground that he was unfit to hold office by reason of his conviction and imprisonment, and that power was properly exercised.

(ii) the plaintiff had waived his right to succeed in the proceedings by appealing to the Home Secretary in 1943 and accepting and acting on his decision for three years.

(iii) the action was barred by the Limitation Act, 1939, s. 21, it being brought against a public authority charged with a public duty in respect of something done in the discharge of that public duty more than a year before the issue of the writ.—*Hogg v. Scott*, [1947] K. B. 759; [1947] 1 All E. R. 788; 177 L. T. 32; 111 J. P. 282; 63 T. L. R. 320; 91 Sol. Jo. 264; 45 L. G. R. 315. [1457]

*Police—Pension—“Injury received in execution of duty”—Duodenal ulcer—Police Pensions Act, 1921 (c. 31), s. 2 (1) (c).*

For some months before September, 1939, a police officer was working very long hours and was subjected to exceptional worry in the course of his duty. He contracted a duodenal ulcer caused, according to medical evidence, by his conditions of work and the consequent irregular meals and rest. He applied for a special pension under the Police Pensions Act, 1921:—

*Held*: (i) the duodenal ulcer was “an injury received in the execution of his duty” by the officer, within s. 2 (1) (c) of the Act of 1921, and he was, therefore, entitled to a special pension.

*Garvin v. Police Authority for the City of London*, [1944] K. B. 358; [1944] 1 All E. R. 378, *followed*.

(ii) the Divisional Court was bound to follow its own decision in *Garvin’s* case. Where, as in matters arising under s. 17 (2) of the Police Pensions Act, 1921, the Divisional Court was made the final court of appeal, it must, as a general rule, follow a previous decision of the court and so avoid a conflict of authority and lack of finality.

*Young v. Bristol Aeroplane Co., Ltd.*, [1944] K. B. 718; [1944] 2 All E. R. 293, *applied*.—*Huddersfield Police Authority v. Watson*, [1947] K. B. 842; [1947] 2 All E. R. 193; 177 L. T. 114; 111 J. P. 463; 63 T. L. R. 415; 91 Sol. Jo. 421; 45 L. G. R. 511. [1458]

## PUBLIC ASSISTANCE

STATUTES:—	PAGE	ORDERS, CIRCULARS AND MEMORANDA:—	PAGE
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### STATUTES

#### POLISH RESETTLEMENT ACT, 1947

(10 & 11 Geo. 6, c. 19)

#### PRELIMINARY NOTE

This Act, which received the Royal Assent on March 27, 1947, was passed primarily to enable government departments to take over certain functions previously performed by the Interim Treasury Committee for Polish Questions, which was set up when the British Government withdrew its recognition of the London Polish Government on July 5, 1945, and which was composed of British civil servants under whom worked a body of Poles. Three particular provisions of the Act may conveniently be considered in this title.

First, s. 2 of the Act, in conjunction with Part I of the Schedule thereto, provides for the grant on certain conditions of allowances by the Assistance Board to persons of the categories specified in s. 2 (2). Allowances were paid to Polish nationals by the Interim Treasury Committee at a rather higher rate than those



paid by the Assistance Board to British subjects, owing to the destitute condition of the majority of the beneficiaries when they arrived in the United Kingdom, but this distinction will no longer apply. Certain Poles may, however, receive assistance under this section who would not have qualified for assistance under the Unemployment Assistance Act, 1934 (27 Halsbury's Statutes 786), had they been British subjects; this was pointed out by the Parliamentary Secretary to the Ministry of Labour in the debate on the Second Reading of the Bill in the House of Commons when he said, on February 12, 1947 :—

“ . . . The condition which we apply to British people is that they must be available for and able to work. In this case it has been widened so as to take into account and to enable the Assistance Board to pay unemployment assistance to Poles who are too old to work, or who are sick and have not acquired National Health Insurance rights ” (493 H. of C. Official Report 471).

Secondly, the provision of accommodation in camps and otherwise for Poles of specified categories is dealt with in s. 3 and Part II of the Schedule. A number of such camps existed in Great Britain before the passing of the Act, but their organisation is now placed on a more satisfactory basis by being made the responsibility of the Assistance Board, and the position of persons living in the camps, which are distinct from the military camps in which the Resettlement Corps is housed, is more clearly defined. An important point to note is that the Board may, with the approval of the Treasury, fix a scale of charges for benefits provided under this section, require payment therefor (s. 3 (6) and Sched., Part II), and if need be recover in a civil court the amounts due (Sched., Part II, paragraph 5).

Lastly, the Minister of Health assumes responsibility under s. 4 of the Act for the fairly elaborate health services, including convalescent homes and medical dispensaries, set up by the London Polish Government and later administered by the Interim Treasury Committee. Expansion of these services, and in particular the establishment of one or more general hospitals for Polish nationals, is under consideration.

The provision of educational services by the Minister of Education under the Act is dealt with in the title EDUCATION, *ante*. [1459]

#### ARRANGEMENT OF SECTIONS

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SCHEDULE.—Subsidiary provisions as to allowances from the Assistance Board, and as to charges for accommodation, etc., provided by them.

*An Act to provide for the application of the Royal Warrant as to pensions, etc., for the military forces to certain Polish forces, to enable the Assistance Board to meet the needs of, and to provide accommodation camps or other establishments for, certain Poles and others associated with Polish forces, to provide for their requirements as respects health and educational services, to provide for making arrangements and meeting expenses in connection with their emigration, to modify as respects the Polish resettlement forces and past members of certain Polish forces provisions relating to the service of aliens in the forces of the Crown, to provide for the discipline and internal administration of certain Polish forces and to affirm the operation up to the passing of this Act of provision previously made therefor, and for purposes connected therewith and consequential thereon.*

[1460]

[27th March, 1947.]

\* \* \* \* \*

**2. Allowances from the Assistance Board.**—(1) An allowance may be granted by the Assistance Board (in this and the next succeeding section

referred to as "the Board") to a person in the United Kingdom of any of the categories specified in subsection (2) of this section, being a person who has attained the age of sixteen years, if he proves in accordance with rules made under the Unemployment Assistance Act, 1934,—

- (a) that he is in need of an allowance ;
- (b) that he has no work, or only such part-time or intermittent work as not to enable him to earn sufficient for his needs ; and
- (c) that he is, if required by the Board so to be, registered for employment in the prescribed manner ;

and if he has made application for an allowance in the prescribed manner.

[1461]

(2) The said categories are—

- (a) Poles whose registration under the Aliens Order, 1920, took place on or after the first day of September, nineteen hundred and thirty-nine, and who have been permitted to enter, or to remain in, the United Kingdom in view of circumstances attributable to war, as to which, in case of doubt, a certificate of the Secretary of State shall be conclusive ;
- (b) former members of any of the forces mentioned in subsection (1) of section one of this Act (including the naval detachment therein mentioned), and members of any of those forces relegated from service therewith ;
- (c) wives of men of categories (a) and (b), and any woman who, having been the wife of a man of either of those categories, has ceased so to be, and has not re-married ;
- (d) persons who have been permitted to enter the United Kingdom on or after the first day of September, nineteen hundred and thirty-nine, as being followers of a body of Polish forces entering the United Kingdom and dependent thereon or on members thereof, as to which, in case of doubt, a certificate of the Secretary of State shall be conclusive. [1462]

(3) This section shall be construed with, and treated for all purposes as forming part of, the Unemployment Assistance Act, 1934, and the enactments therein contained shall apply accordingly, subject to the modifications set out in Part I of the Schedule to this Act, and the provisions of any rules or regulations for the time being in force under that Act shall apply accordingly. [1463]

(4) There shall be defrayed out of moneys provided by Parliament any increase attributable to the passing of this section in the sums payable out of such moneys under section forty-seven of the Unemployment Assistance Act, 1934, or section six of the Determination of Needs Act, 1941 and any sums received by the Board under the Unemployment Assistance Act, 1934, as applied for the purposes of this section shall be paid into the Exchequer. [1464]

*Effect of section.*—See the Preliminary Note, *ante*.

*Assistance Board.*—This was formerly the Unemployment Assistance Board, constituted under s. 35 of the Unemployment Act, 1934 (27 Halsbury's Statutes 786). Its name was changed and its functions enlarged by s. 10 of the Old Age and Widows' Pensions Act, 1940 (33 Halsbury's Statutes 517). Since the present Act received the Royal Assent a Bill has been presented in Parliament under which it is proposed that the name of the Board shall be further changed to the National Assistance Board.

*United Kingdom.*—Great Britain and Northern Ireland (Royal and Parliamentary Titles Act, 1927, s. 2 (2) ; 3 Halsbury's Statutes 191).

*Unemployment Assistance Act, 1934.*—27 Halsbury's Statutes 786. This Act comprises Part II of the Unemployment Act, 1934. By s. 57 (2) of the Act (27 Halsbury's Statutes 804), the said Part II may be cited separately as the Unemployment Assistance Act, 1934.

For s. 47 thereof, see 27 Halsbury's Statutes 797.

*In the prescribed manner.* In the manner prescribed by rules made under the 1934 Act (see s. 54 (1) thereof ; 27 Halsbury's Statutes 801). See also note on "Construed with," *infra*.

*Polas.*—S. 10 (1) of the present Act defines " Pole " for the purposes of the Act, unless the context should otherwise require, as " a person registered under the Aliens Order, 1920, as being a Pole."

*Aliens Order, 1920.*—S. R. & O., 1920, No. 448, now amended by various Orders, the most important of which is the Aliens Order, 1939 (S. R. & O., 1939, No. 994).

By s. 10 (2) of the present Act, references in the Act to the Aliens Order, 1920, are to be construed as references to that order as for the time being in force and to any order substituted therefor.

*Circumstances attributable to war.*—In the course of discussion of this phrase at the Committee Stage of the Bill in the House of Commons on February 20, 1947, the Secretary of State for the Home Department said :—

" It is not my intention to widen admission to the benefits of this Clause to others than the persons employed as civilians by the London Polish Government, or their relatives. . . . I can assure my hon. Friend that, generally, admission of displaced persons who have no connection with the London Polish Government will not come within the categories that will receive my certificate as arriving here through causes attributable to the war, in the meaning that is to be attached to it in this Clause " (433 H. of C. Official Report 1523).

*Case of doubt.*—*I.e.* doubt in the minds of the Assistance Board (433 H. of C. Official Report 1525).

*S. 1 (1) of this Act.*—The forces mentioned in this subsection are :—

" (a) the Polish naval detachment mentioned in the agreement made between His Majesty's Government in the United Kingdom and the Government of Poland on the eighteenth day of November, nineteen hundred and thirty-nine,

" (b) the Polish armed forces organised and employed under British command in pursuance of the agreement made as aforesaid on the fifth day of August, nineteen hundred and forty,

" (c) the Polish resettlement forces."

Unless the context otherwise requires, " Polish resettlement forces " means " the Polish Re-Settlement Corps, the Polish Re-Settlement Corps (Royal Air Force), the Polish Re-Settlement Section of the Auxiliary Territorial Service, and the Polish Re-Settlement Section of the Women's Auxiliary Air Force " (s. 10 (1) of the Act).

*Followers, etc.*—This expression is to be interpreted widely, and covers, *inter alia*, all civil administrative staff in this country and all people who were connected with the London Polish Government (433 H. of C. Official Report 375, 376).

The phrase as originally drafted read " . . . followers of and dependent on a body of Polish forces entering the United Kingdom ", but it was amended to its present form at the Recommittal Stage in the House of Commons on March 4, 1947, in order to bring within the scope of the present section persons dependent on individual members of such forces (434 H. of C. Official Report 447).

*Construed with.*—Accordingly this section is to be construed as if it were contained in the Unemployment Assistance Act, 1934 (27 Halsbury's Statutes 786), unless there is any manifest discrepancy showing that this section has modified something to be found in the earlier Act (*Canada Southern Rly. Co. v. International Bridge Co.* (1883), 8 App. Cas. at p. 727; *Hart v. Hudson Brothers, Ltd.*, [1928] 2 K. B. 629, 634; *Phillips v. Parnaby*, [1934] 2 K. B. 299). Thus words defined in the earlier Act will bear the like meaning in this section, unless it is clear from the context that their construction in this section is different.

*Determination of Needs Act, 1941, s. 6.*—34 Halsbury's Statutes 437. Under this section expenses of the Assistance Board are to be defrayed out of moneys provided by Parliament subject to a " ceiling figure " in respect of moneys to be defrayed for the purposes of the Unemployment Assistance Act, 1934 (see note on that Act, *ante*).

### 3. Provision by the Assistance Board of accommodation in camps.—

(1) The Board may provide accommodation in camps, hostels or other establishments for persons in Great Britain being of any of the categories specified in subsection (2) of the last preceding section, or dependants of persons of any of those categories or of members of any of the Polish resettlement forces serving therewith, or persons formerly dependent on a person who was of any of those categories, or was such a member of any of those forces, at that former time. [1465]

(2) The Board may make provision for meeting the needs (other than medical needs as defined in the Unemployment Assistance Act, 1934, or needs as to education), and for promoting the welfare, of persons for whom accommodation is provided under this section, and may make such provision in such manner as appears to them most convenient, whether by themselves providing goods or services, by making payments to others for the provision thereof, by making payments to persons for whom accommodation is provided, or partly in one of those ways and partly in another. [1466]

(3) The Board may make arrangements with any government department or other authority or person for the provision of benefits under this

section, on behalf and at the expense of the Board, by that authority or person. [1467]

(4) The Board may make rules for the well-ordering of camps, hostels or other establishments in which accommodation is provided under this section, and any person who contravenes or fails to comply with a rule so made shall be liable on summary conviction to a fine not exceeding twenty-five pounds or to imprisonment for a term not exceeding three months, or to both such fine and such imprisonment. [1468]

(5) The provision of benefits under this section for any person shall be at the discretion of the Board, and, without prejudice to the generality of this subsection, the Board may render the provision of any benefits thereunder for a person conditional on his being registered for employment in the manner prescribed by rules made under the Unemployment Assistance Act, 1934, if required by the Board so to be, and may render the provision for a person of accommodation, or of accommodation in any particular camp or other establishment, conditional on his observing rules made under the last preceding subsection. [1469]

(6) The Board may from time to time fix for benefits provided under this section such scales of charges applicable in different circumstances as may appear to the Board, with the approval of the Treasury, to be appropriate, and may from time to time require payments for such benefits to be made in accordance with the provisions of Part II of the Schedule to this Act. [1470]

(7) Section forty-eight of the Unemployment Assistance Act, 1934 (which provides for the prosecution of persons obtaining allowances fraudulently and for the recovery of sums procured by non-disclosure or misrepresentation by way of allowance in excess of allowance that would otherwise have been made) shall apply as respects benefits under this section with the substitution, for references in the said section forty-eight to such allowances and to the amount of any such excess of allowance, of references to such benefits and to the amount or value of any excess of benefit over what would have been provided but for the non-disclosure or misrepresentation. [1471]

(8) The Board shall have, in relation to a person for whom they have power to provide accommodation under this section the like right to complain to a petty sessional court as is conferred by section nineteen of the Poor Law Act, 1930, on a council therein mentioned in relation to a married woman requiring relief and a person whose relief would be chargeable to the council, and the powers of the court under that section shall be exercisable on such complaint. [1472]

(9) The provisions of subsection (3) of section forty-eight of the Unemployment Assistance Act, 1934, as to proceedings on behalf of the Board shall apply to any such proceedings under this section or under Part II of the Schedule to this Act. [1473]

(10) In proceedings under subsection (4) of this section prima facie evidence of rules therein mentioned may be given by production of a document certified by an officer of the Board to be a true copy thereof and a document purporting to be so certified shall be deemed to be such a document unless the contrary is proved. [1474]

(11) There shall be defrayed out of moneys provided by Parliament any increase attributable to the passing of this section in the sums payable out of such moneys under section forty-seven of the Unemployment Assistance Act, 1934, or section six of the Determination of Needs Act, 1941, and any sums received by the Board under this section or under section forty-eight of the Unemployment Assistance Act, 1934, as applied by this section, shall be paid into the Exchequer. [1475]

*Effect of section.*—See the Preliminary Note, *ante*.

*The Board.*—The Assistance Board (s. 2 (1), *ante*).

*Other establishments.*—Accommodation to be provided is limited to the various establishments run by the Board or its agents. The Secretary of State for the Home Department gave the following assurance to the House of Commons at the Committee Stage of the Bill:—

“The Assistance Board do not intend in any circumstances to billet Polish civilians in private houses” (433 H. of C. Official Report 1550).

*Dependants, etc.*—See note to s. 2, *ante*, on the phrase “Followers, etc.”

*Polish resettlement forces.*—See note to s. 2, *ante*.

*Medical needs.*—S. 54 (1) of the Unemployment Assistance Act, 1934 (27 Halsbury's Statutes 801), defines “medical needs” as “the need of medical or surgical assistance, including any need of drugs, medical or surgical appliances or of nursing or similar services.” The medical needs of persons for whom the Board has power to provide accommodation under the present section are provided for by s. 4, *infra*.

*Needs as to education.*—These are dealt with by s. 6 of the Act; see title EDUCATION, *ante*.

*Any government department or other authority or person.*—This would include local authorities and such bodies as the Y.M.C.A., the Y.W.C.A. and the Hostels Corporation.

The bodies or persons concerned need not be British. Note that the Board remains responsible for the operation of this section.

*Unemployment Assistance Act, 1934.*—27 Halsbury's Statutes 786 (see note to s. 2, *ante*). For ss. 47 and 48 thereof, see 27 Halsbury's Statutes 797. S. 48 (3) provides that proceedings under that section before a court of summary jurisdiction “may be instituted, prosecuted or conducted on behalf of the Board by any officer authorised in that behalf by a special or general direction of the Board, notwithstanding that he is not of counsel or a solicitor.”

*Poor Law Act, 1930, s. 19.*—12 Halsbury's Statutes 979. This is the section that gives county and county borough councils power to obtain maintenance orders on complaint to petty sessional courts, *inter alia*, where married women require relief without their husbands.

*Determination of Needs Act, 1941, s. 6.*—34 Halsbury's Statutes 437. See note to s. 2, *ante*.

**4. Provision by the Minister of Health of health services.**—(1) The Minister of Health may provide such services and do such things as appear to him to be requisite for meeting the medical needs as defined in the Unemployment Assistance Act, 1934, or other needs as to mental or bodily health, of persons of any description for whom the Assistance Board have power to provide accommodation under section three of this Act, including any such services and things as are specified in the National Health Service Act, 1946, as services or things which, on or after the appointed day for the purposes of that Act, the Minister of Health, local health authorities, executive councils or other persons is or are authorised or required to provide or do, or may be authorised or required to provide or do, by or under that Act, and any services and things the provision or doing of which is within the duties of local health authorities under the Lunacy and Mental Treatment Acts, 1890 to 1930, or the Mental Deficiency Acts, 1913 to 1938. [1476]

(2) The Minister of Health may make arrangements with any other government department or other authority or person for the provision of services or the doing of things under this section, on his behalf and at his expense, by that authority or person. [1477]

(3) The expenses of the Minister of Health under this section shall be defrayed out of moneys provided by Parliament. [1478]

*Effect of section.*—See the Preliminary Note, *ante*.

*Medical needs.*—S. 54 (1) of the Unemployment Assistance Act, 1934 (27 Halsbury's Statutes 801), defines “medical needs” as “the need of medical or surgical assistance, including any need of drugs, medical or surgical appliances or of nursing or similar services.”

*National Health Service Act, 1946.*—39 Halsbury's Statutes 515. This Act provides for the establishment of a comprehensive health service for England and Wales. Broadly, this service will consist of hospital and specialist services, which are the responsibility of the Minister of Health; health services provided by local health authorities, and general medical and dental services, etc., provided by medical, dental and other practitioners.

*Lunacy and Mental Treatment Acts, 1890 to 1930.*—These are the Lunacy Act, 1890 (11 Halsbury's Statutes 17); the Lunacy Act 1891 (11 Halsbury's Statutes 144); the Lunacy Act, 1908 (11 Halsbury's Statutes 151); the Lunacy Act, 1922 (11 Halsbury's Statutes 198); and the Mental Treatment Act, 1930 (23 Halsbury's Statutes 154).

*Mental Deficiency Acts, 1913 to 1938.*—These are the Mental Deficiency Act, 1913 (11 Halsbury's Statutes 160); the Mental Deficiency and Lunacy (Amendment) Act, 1919 (9 & 10 Geo. 5, c. 85); the Mental Deficiency (Amendment) Act, 1925 (11 Halsbury's Statutes 199); the Mental Deficiency Act, 1927 (11 Halsbury's Statutes 200); and the Mental Deficiency Act, 1938 (31 Halsbury's Statutes 421).

*Government department or other authority or person.*—This empowers arrangements with local authorities.

The bodies or persons concerned need not be British, but the Minister of Health remains responsible for action taken under this section.

\* \* \* \* \*

**13. Short title.** This Act may be cited as the Polish Resettlement Act, 1947. [1479]

Sections 2 and 3

## SCHEDULE

SUBSIDIARY PROVISIONS AS TO ALLOWANCES FROM THE ASSISTANCE BOARD, AND  
AS TO CHARGES FOR ACCOMMODATION, ETC., PROVIDED BY THEM

### PART I

*Modifications of the Unemployment Assistance Act, 1934, in its application  
by virtue of section two of this Act*

1.—(1) Persons falling within subsection (1) of section two of this Act shall be included in the class of persons to whom the Unemployment Assistance Act, 1934 (in this Schedule referred to as “the Act of 1934”), applies, notwithstanding that the qualifications set out in subsection (1) of section thirty-six of that Act are not fulfilled.

(2) Any question whether a person is or is not a person to whom the Act of 1934 applies by virtue of this paragraph shall be determined in accordance with the provisions of section thirty-six of that Act, with the substitution, for references therein to the qualifications set out in subsection (1) thereof, of references to a person's falling within subsection (1) of section two of this Act, and without regard to the provisions of subsection (2) of the said section thirty-six or to the proviso to subsection (3) thereof (which relate only to the qualifications set out in subsection (1) thereof).

2. On an application for the grant of an allowance by virtue of section two of this Act, subsection (1) thereof shall apply in substitution for subsection (1) of section thirty-eight of the Act of 1934 (which specifies matters to be proved as conditions for the grant of allowances) [1480]

### PART II

*Provisions as to charges for accommodation etc. provided under section three  
of this Act*

3. Payments for benefits provided for any person under section three of this Act may be required under subsection (6) of that section from that person, or, in the case of a married person, from his wife or her husband, or, in the case of a person who is under the age of sixteen years and has parents or a parent living (including in that expression the step-father of such a person who is deemed to be part of the step-father's family for the purposes of the Poor Law Act, 1930), from the parents or either of them.

4. The amounts of the payments which may be required shall be such amounts, not exceeding what appears to the Assistance Board (in this Part of this Schedule referred to as “the Board”) to be the appropriate scale charge fixed under the said subsection (6), as may appear to the Board to be reasonable having regard to all the circumstances affecting the person on whom the requirement is made:

Provided that the appeal tribunal constituted under the Act of 1934 shall have power, on reference to them of such a requirement in the manner and within the time prescribed for appeals under subsection (5) of section thirty-nine of the Act of 1934, to determine what scale charge is appropriate and whether the amounts required to be paid are reasonable having regard to the circumstances aforesaid, and if they think fit, to vary those amounts.

5. Sums required to be paid in accordance with the preceding provisions of this Part of this Schedule shall, without prejudice to any other remedy be recoverable summarily as a civil debt, and proceedings for such recovery may, notwithstanding anything in any Act to the contrary, be brought at any time within one year from the time when the matter complained of arose.



6. In any proceedings for recovery of sums required to be paid as aforesaid a document signed by an officer of the Board stating the making and particulars of the requirement, whether there was any reference to the appeal tribunal duly made and, if there was, the determination of the tribunal, shall be evidence of the facts stated, and a document which purports to be so signed shall, unless the contrary is proved, be deemed to be so signed.

7. Any person who, in connection with the ascertainment of amounts which he may be reasonably required to pay under subsection (6) of section three of this Act, knowingly makes any false statement or false representation as to the circumstances affecting him shall be liable on summary conviction to imprisonment for a term not exceeding three months.

8. If it is found at any time that a person required to pay amounts under subsection (6) of section three of this Act, has, whether fraudulently or otherwise, procured by the non-disclosure or misrepresentation of a material fact that the amounts required to be paid should be less than they would otherwise have been, a further requirement may be made upon him under the said subsection in respect of the benefits in question, and the preceding provisions of this Part of this Schedule shall apply thereto with requisite modifications. [1481]

*Unemployment Assistance Act, 1934.*—27 Halsbury's Statutes 786. For ss. 36, 38 and 39 thereof, see 27 Halsbury's Statutes 787, 789, 790.

The qualifications set out in s. 36 (1) of that Act (see *supra*) are as follows:—

“(a) that he has attained the age of sixteen years and has not attained the age of sixty-five years; and

“(b) that he is either—

“(i) a person whose normal occupation is employment in respect of which contributions are payable under the Widows', Orphans' and Old Age Contributory Pensions Acts, 1925 to 1932; or

“(ii) a person who, not having normally been engaged in any remunerative occupation since attaining the age of sixteen years, might reasonably have expected that his normal occupation would have been such employment as aforesaid but for the industrial circumstances of the district in which he resides; and

“(c) that he is capable of and available for work:

“Provided that during any period during which a person is disqualified for receiving benefit under the Unemployment Insurance Acts owing to his having lost employment by reason of a stoppage of work which was due to a trade dispute, or during which he would have been so disqualified as aforesaid if he had been an insured contributor under those Acts, he shall, notwithstanding that the foregoing qualifications are fulfilled in his case, be deemed not to be a person to whom this Part of this Act applies.”

*Poor Law Act, 1930.*—12 Halsbury's Statutes 968. S. 14 (3) of this Act reads as follows:—

“A man who marries a woman having a child (whether legitimate or illegitimate) at the time of the marriage shall be liable to maintain the child as part of his family, and shall be chargeable with all relief granted to or on account of the child until the child attains the age of sixteen, or until the death of the mother of the child, and the child shall, for the purposes of this Act, be deemed to be part of the husband's family accordingly.”

*Appeal tribunals constituted under the Act of 1934.*—“The Act of 1934” means the Unemployment Assistance Act, 1934 (see paragraph 1 (1), *ante*), s. 39 (4) and Sched. VII, of which provide for the establishment, constitution and proceedings of appeal tribunals (27 Halsbury's Statutes 791, 820).

Under the said Sched. VII each tribunal consists of a chairman and two other members, the chairman being appointed by the Minister of Health and the other members by the Unemployment Assistance Board (now the Assistance Board); one of these members is selected by the Board from a panel of persons nominated by the Minister to represent work-people, and the other represents the Board.

## ORDERS, CIRCULARS AND MEMORANDA

### TRANSFER OF FUNCTIONS (RELIEF OF CHILDREN) ORDER, 1947

S. R. & O., 1947, No. 1644

July 25, 1947

Whereas it is provided by the Ministers of the Crown (Transfer of Functions) Act, 1946, that it shall be lawful for His Majesty by Order in Council to



transfer to any Minister of the Crown any functions theretofore exercisable by another Minister of the Crown :

And whereas by the Poor Law Act, 1930, certain functions relating to the relief of the poor are conferred on the Minister of Health :

And whereas it appears to His Majesty to be expedient that certain of the said functions, in so far as they relate to the relief of children, should be transferred to the Secretary of State :

Now, therefore, His Majesty is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows :—

1.—(1) This Order may be cited as the Transfer of Functions (Relief of Children) Order, 1947, and shall come into operation on the first day of September, 1947.

(2) In this Order the expression “ children ” means—

(a) persons who have not attained the age of eighteen years and in respect of whom the rights and duties of a parent or parents are for the time being vested by virtue of a resolution of a council of a county or county borough under section 52 of the Poor Law Act, 1930, in that council ; and

(b) other persons who have not attained the age of sixteen years.

(3) The Interpretation Act, 1889, shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament. [1482]

2. There shall be transferred to the Secretary of State the functions of the Minister of Health exercisable by him under the Poor Law Act, 1930, and the rules, orders and regulations made thereunder in so far as those functions relate to the relief of children :

Provided that nothing in this Article shall operate so as to transfer any functions of the Minister of Health relating to—

- (a) any child in receipt of relief who is in the same premises as his parent ;
- (b) any patient in a hospital or other premises, not being a children's home as defined in the Public Assistance Order, 1930, for the purpose of receiving medical or surgical treatment or of convalescence therein ;
- (c) any child accommodated under an evacuation plan who is in receipt of relief by reason only of the supply of pocket money or clothing ; and
- (d) any matter common to the relief of children and other persons with respect to which by reason of this Article functions would, but for this paragraph, be exercisable by the Secretary of State as well as by the Minister of Health,

or any functions of the Minister of Health under section 161 of the said Act (which empowers county and county borough councils to refer to that Minister disputes as to settlement, removal or chargeability). [1483]

3.—(1) In the construction and for the purposes of any enactment, rule, order, regulation or other document passed or made before the date of the coming into operation of this Order, any reference to the Minister of Health shall, so far only as may be necessary for the purpose of or in consequence of the transfer of functions under this Order, be construed as a reference to the Secretary of State.

(2) This Order shall not prejudice the operation of any rule, order, regulation, appointment, direction, approval, notice or consent made or given or other thing done by the Minister of Health before the date of the coming into operation of this Order in relation to functions thereby transferred, but any such matter, if then in force, shall continue in force to the like extent and subject to the like provisions as if it had been duly made, given or done by the Secretary of State. [1484]

## PUBLIC HEALTH

## CASES :—

	PAGE		PAGE
Bolsover Urban District Council v. Bolsover Colliery Co., Ltd., [1947]		Chesterton Rural District Council v. Ralph Thompson, Ltd., [1947]	
1 All E. R. 130 — — —	501	1 All E. R. 273 — — —	501
Croydon Corpn. v. Thomas, [1947]		Peach v. Lowe, [1947] 1 All E. R. 441 — — —	502
1 All E. R. 239 — — —	501		

## CASES

*Mines—Coal mine—Seams passing under sanitary works—Notice of intention to work—Particular seams not specified—Validity of notice—Waterworks Clauses Act, 1847 (c. 17), s. 22—Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883 (c. 37).*

A colliery company owned mines under, or within 40 yards from, sanitary works owned and controlled by a local authority. By a notice given to the authority under the Waterworks Clauses Act, 1847, and the Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883, the company stated that, "as owners, lessees and licensees entitled to work and get seams of coal under or within the prescribed distance of" the authority's sanitary works (described as being situated within three named parishes), they gave notice "that we are desirous of working the said seams of coal and that it is our intention to work the same on the expiration of thirty days after the service upon you of this notice." In due course the company worked some of the seams. The local authority contended that the notice was bad (a) because the company had not specified which particular seams they desired to work, and (b) because the notice covered too large an area :—

*Held*: it was not necessary for the company to particularise the seams of coal which it intended to work, and the notice did not cover too large an area, and the notice was, therefore, valid.

*Midland Ry. Co. v. Robinson* (1887), 37 Ch. D. 386, *applied*.—*BOLSOVER URBAN DISTRICT COUNCIL v. BOLSOVER COLLIERY CO., LTD.*, [1947] 1 All E. R. 130 ; [1947] L. J. R. 348 ; 176 L. T. 161 ; 111 J. P. 139 ; 45 L. G. R. 175. [1485]

*Public health—Dustbin—Provision—Owner of building required by local authority to provide—Right of appeal to justices—Public Health Act, 1936 (c. 49), s. 75.*

The owner of a building may appeal against a requirement of a local authority that he shall provide a dustbin under s. 75 of the Public Health Act, 1936, on the ground that the burden of providing the dustbin should be thrown on the tenant and not on the owner, and the justices have an unrestricted discretion in dealing with such an appeal.—*CROYDON CORPN. v. THOMAS*, [1947] K. B. 386 ; [1947] 1 All E. R. 239 ; [1947] L. J. R. 484 ; 111 J. P. 157 ; 45 L. G. R. 114, D. C. [1486]

*Public health—Drainage—New building—Satisfactory provision for drainage of building—Drains of particular building—Public Health Act, 1936 (c. 49), s. 37 (1).*

S. 37 (1) of the Public Health Act, 1936, provides : "Where plans of a building . . . are . . . deposited with a local authority, the authority shall reject the plans unless . . . the plans show that satisfactory provision will be made for the drainage of the building. . . ."

The words "drainage of the building" in the subsection refer to the

drains of the individual building or buildings the plans of which are deposited, and not to the system of drainage for that building or buildings and other buildings. Consequently, if the plans of a building show that satisfactory provision will be made for the drainage of that particular building, the local authority are not entitled to reject them on the ground that the sewer designed to take that drainage leads to an inefficient septic tank with the result that a nuisance may be caused by the failure of the tank adequately to deal with the sewage.—CHESTERTON RURAL DISTRICT COUNCIL v. RALPH THOMPSON, LTD., [1947] K. B. 301; [1947] 1 All E. R. 273; [1947] L. J. R. 178; 177 L. T. 501; 111 J. P. 127; 45 L. G. R. 31, D. C. [1487]

*Landlord and tenant—Rent restriction—Recovery of possession—Premises not in reasonable state of repair—Certificate of sanitary authority—Whether ipso facto bar to landlord's right of possession—Rent and Mortgage Interest Restrictions (Amendment) Act, 1933 (c. 32), s. 12, Sched. I (b).*

*Landlord and tenant—Rent Restriction—Rent—Premises not in reasonable state of repair—Certificate of sanitary authority—Whether obligation to pay suspended in toto—Rent Restrictions (Notices of Increase) Act, 1923 (c. 13), s. 3 (3).*

A certificate issued by a sanitary authority under the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, s. 12, that a dwelling-house to which the principal Acts apply is not in a reasonable state of repair is not, of itself, *ipso facto*, a bar to the landlord's right of possession. Under s. 3 of, and Sched. I (b) to, the Act, the court must consider whether it is reasonable to make an order for possession. The contractual obligation to pay rent is not suspended *in toto* by reason of the failure of the landlord to comply with such a certificate, for s. 3 (3) of the Rent Restrictions (Notices of Increase) Act, 1923, only suspends the right to recover, and consequential remedies for non-payment of, permitted increases in the rent.—PEACH v. LOWE, [1947] 1 All E. R. 441, C. A. [1488]

## PUBLIC SERVICE VEHICLES

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## ORDERS, CIRCULARS AND MEMORANDA

### EMERGENCY POWERS (DEFENCE) ROAD VEHICLES AND DRIVERS (AMENDMENT) ORDER, 1947

S. R. & O., 1947, No. 1405

July 3, 1947

The Minister of Transport in exercise of the powers conferred upon him by Regulations 72 and 87 of the Defence (General) Regulations, 1939, as

having effect by virtue of the Supplies and Services (Transitional Powers) Act, 1945, and of all other powers enabling him in that behalf, hereby makes the following Order :—

1. The Emergency Powers (Defence) Road Vehicles and Drivers Order, 1943, as amended by the Emergency Powers (Defence) Road Vehicles and Drivers (Amendment) Order, 1944, the Emergency Powers (Defence) Road Vehicles and Drivers (Amendment) Order, 1945, the Emergency Powers (Defence) Road Vehicles and Drivers (Amendment) (No. 2) Order, 1945, the Emergency Powers (Defence) Road Vehicles and Drivers (Amendment) Order, 1946, the Emergency Powers (Defence) Road Vehicles and Drivers (Amendment) (No. 2) Order, 1946, and the Emergency Powers (Defence) Road Vehicles and Drivers (Amendment) (No. 3) Order, 1946, shall have effect as though :—

- (1) the date “ 31st July, 1947 ”, and the date “ 31st July, 1948 ”, were respectively substituted for the date “ 31st July, 1946 ”, and the date “ 31st July, 1947 ”, wherever either of them occurs in paragraphs 2, 8, 14 and 15 thereof ;
- (2) the date “ 30th November, 1947 ”, were substituted for the date “ 30th November, 1946 ”, in sub-paragraph (c) of paragraph 13 thereof ; and
- (3) the following paragraphs were added immediately after paragraph 20 thereof :—

“ 20A. Every authorisation given under paragraph 2 of this Order to drive or to act as conductor of a public service vehicle shall cease to have effect in relation to the holder thereof on the date on which he is licensed to drive or to act as conductor, as the case may be, of a public service vehicle under the provisions of section 77 of the Road Traffic Act, 1930.

20B. Every authorisation to drive a tram, a trolley vehicle or a hackney carriage or to act as a conductor of a tram or a trolley vehicle given under paragraph 2 of this Order shall cease to have effect as regards the person so authorised on the date on which a licence to drive a tram, a trolley vehicle or a hackney carriage or to act as a conductor of a tram or a trolley vehicle issued under the provisions of the Metropolitan Public Carriage Act, 1869, comes into effect in relation to that person ”. [1489]

2. This Order shall come into force on the 31st day of July, 1947, and may be cited as “ The Emergency Powers (Defence) Road Vehicles and Drivers (Amendment) Order, 1947 ”. [1490]

\* \* \* \* \*

### EXPLANATORY NOTE

*(This Note is not part of the Order, but is intended to indicate its general purport.)*

*This Order (1) extends for 12 months from the date when it would otherwise have expired any authorisation in force on the 31st July, 1946, to :—*

- (i) *act as a driver or conductor of a public service vehicle ;*
- (ii) *act as a driver or conductor of a tram or trolley vehicle or as a driver of a hackney carriage in the metropolitan police district ;*
- (iii) *use a public service vehicle ;*
- (iv) *operate a road passenger service under a permit ;*
- (v) *use a goods vehicle under A, B or C carrier's licence or permit ;*

*(2) provides that a goods vehicle, notwithstanding any conditions attached to its licence or permit, may be used for any purpose in connection with harvesting work until 30th November, 1947 ; and*

(3) provides further that any authorisation to act as driver or conductor of a public service vehicle, or of a tram or trolley vehicle in the metropolitan police district or to act as driver of a hackney carriage in that district, shall cease to have effect when a corresponding licence comes into force under section 77 of the Road Traffic Act 1930 or section 8 of the Metropolitan Public Carriage Act 1869, as the case may be.

## CASES

*Street and aerial traffic—Omnibus undertaking—Local authority operating omnibus undertaking under local Act—Revenue to be applied “in maintaining” omnibuses, garages, etc.—New omnibuses required for replacement or as additions—Purchase out of capital or revenue—Mynyddislwyn Urban District Council Act, 1926 (c. lxxv), ss. 90, 91.*

An omnibus board was established under the Mynyddislwyn Urban District Council Act, 1926, to provide, maintain and run omnibuses on routes within certain specified areas, and by virtue of agreements confirmed by the Act, acquired certain omnibus undertakings which had been operating in the areas concerned. It was provided by s. 91 of the Act that the board should apply “all money from time to time received by them in respect of their undertaking except money received on capital account,” *inter alia*, “in maintaining the omnibuses, garages and other buildings and plant and appliances belonging to or leased by the board”—

*Held*: the word “maintaining” when used in relation to a fleet of omnibuses, meant maintaining not merely in quality or efficiency but in numbers, but it did not include the conception of increase and extend to additions to the fleet. Accordingly the board might properly apply the revenue of its undertaking in maintaining and replacing its existing omnibuses, garages and other buildings and plant, but it had no power to apply the revenue to adding to the numbers of its omnibuses or in purchasing garages and other buildings or plant rendered necessary by the acquisition of such additional omnibuses.—*A.-G. v. WEST MONMOUTHSHIRE OMNIBUS BOARD*, [1947] 1 All E. R. 248; [1947] L. J. R. 456; 176 L. T. 131; 111 J. P. 146; 45 L. G. R. 134. [1491]

*Street and aerial traffic—Public service vehicle—Negligence of transport board—Limitation of liability—“Contract for conveyance of passenger”—Free travelling pass granted to employee of board—Condition excluding liability for damage by negligence—Employee injured while boarding omnibus—Road Traffic Act, 1930 (c. 43), s. 97.*

The plaintiff was an employee of the defendant board and as such held a pass enabling him to travel free on the board's omnibuses. By cl. 6 of the pass, the pass was stated to be issued and accepted “on condition that neither the [board] nor their servants are to be liable to the holder . . . for loss of life, injury or delay . . . however caused.” Owing to the negligence of the conductress, a servant of the board, the plaintiff was thrown off and injured while attempting to board an omnibus. In an action brought by the plaintiff against the board for negligence, it was argued on his behalf that in the circumstances this condition had no application, and that, in any case, it was excluded by the Road Traffic Act, 1930, s. 97, which provides: “Any contract for the conveyance of a passenger in a public service vehicle shall, so far as it purports to negative or to restrict the liability of any person in respect of any claim which may be made against that person in respect of the death of, or bodily injury to, the passenger while being carried in, entering or alighting from the vehicle . . . be void”—

*Held*: (i) the plaintiff, when the injury occurred, was acting in a way which the pass entitled him to and was taking the benefit of a right which the pass gave him, and, therefore, the condition in cl. 6 operated.

(ii) the pass was a mere licence and not a "contract for the conveyance of a passenger" within s. 97, and, therefore, the provisions of that section did not apply.

*Decision of Lord GODDARD, C.J.* ([1946] 1 All E. R. 650; 110 J. P. 215), *affirmed*.—*WILKIE v. LONDON PASSENGER TRANSPORT BOARD*, [1947] 1 All E. R. 258; [1947] L. J. R. 864; 177 L. T. 71; 111 J. P. 98; 63 T. L. R. 115; 45 L. G. R. 170, C. A. [1492]

*Street and aerial traffic—Tramway car—Unlawfully endangering safety of passengers—Injury through driver not stopping at compulsory stop—Conductor collecting fares on top of car—No negligence on part of conductor—Stage Carriages Act, 1832 (c. 120), s. 48.*

An information was preferred by the respondent, a police officer, before a metropolitan magistrate, charging the appellant, a tramway car conductor, with unlawfully endangering the safety of a passenger through negligence, contrary to s. 48 of the Stage Carriages Act, 1832. The magistrate convicted the appellant and fined him 10s. with 6s. costs. The appellant appealed to the County of London Sessions, where it was established that on July 20, 1946, while proceeding along Woolwich Church Street, the driver of the tramway car of which the appellant was the conductor slowed down to a pace of a mile an hour on approaching a compulsory stopping place. He passed the stopping place without coming to a standstill and continued at the same pace. When the car reached the stopping place an elderly woman passenger, who wished to alight and believed that the car had come to a standstill, began to get off the platform. While she was in the act of doing so, the driver accelerated and she was thrown into the road. At the time the appellant was collecting fares on the top of the car. He was unaware that any passenger wished to alight and he took no steps to see whether anyone was going to do so. It was contended for the appellant that the conductor of a tramway car was under no duty to see that passengers were descending safely, and that, when engaged in collecting fares, there was no duty on him, in the absence of notice, to do anything to assist passengers in alighting. The appeals committee dismissed the appeal, being of the opinion that the appellant by negligence had unlawfully endangered the passenger. The appellant appealed:—

*Held*: the appellant was entitled to assume that the driver would stop at the compulsory stopping place and that passengers would not get off before the vehicle came to a stop. There was, therefore, no evidence on which he could be found guilty of negligence, and the conviction must be quashed.—*ASKEW v. BOWTELL*, [1947] 1 All E. R. 883; 63 T. L. R. 316; 91 Sol. Jo. 249; 45 L. G. R. 476. [1493]

*Master and servant—Common employment—Servant temporarily off duty—Injured by negligence of fellow servant—Liability of employer.*

The plaintiff, an omnibus conductor employed by the defendant board, having completed a journey, was standing, during her off-duty time, by her omnibus on the unenclosed forecourt of a station on the underground railway which was owned by the corporation. She was free to do as she liked until the time came for her to resume duty. An omnibus, driven by another employee of the corporation, drew up alongside, and was then backed and driven forward again so negligently that the plaintiff was crushed between the two vehicles:—

*Held*: although the plaintiff's work had brought her to the locality and created the opportunity for her to stand where she was at the time of the accident, at that time she was not doing the work which she had contracted to do, nor was she doing anything which was a natural or necessary consequence of her work or incidental thereto, and, therefore, she was not debarred by the doctrine of common employment from claiming damages from the board for the negligence of their servant.

*Coldrick v. Partridge, Jones & Co., Ltd.* ([1910] A. C. 77), *distinguished*.—*DORRINGTON v. LONDON PASSENGER TRANSPORT BOARD*, [1947] 2 All E. R. 84; 111 J. P. 450; 91 Sol. Jo. 356. [1494]

*Master and servant—Common employment—Linesman and trolley omnibus driver.*

While on a tower wagon, engaged in repairing the overhead gear which supplied current to the defendants' trolley omnibuses, the plaintiff, who was employed by the defendants as a linesman, was injured through the negligence of the driver of one of the defendants' trolley omnibuses:—

*Held*: the plaintiff's safety depended to a special degree on the care and skill of the drivers of all trolley omnibuses proceeding along the route, and the mere fact that there might be other vehicles which would constitute a danger to the plaintiff did not make the danger from a trolley omnibus an "ordinary traffic risk." The plaintiff was, therefore, in common employment with the driver of the trolley omnibus, and the defendants were not liable.

*Dictum* of Lord SIMON in *Miller v. Glasgow Corpn.* ([1947] A. C. 368; [1947] 1 All E. R. 1), *applied*.

*Decision* of HENN COLLINS, J. ([1946] 2 All E. R. 612), *affirmed*.—*LANCASTER v. LONDON PASSENGER TRANSPORT BOARD*, [1947] 2 All E. R. 267; 177 L. T. 207; 111 J. P. 460; 63 T. L. R. 457; 91 Sol. Jo. 409, 459, C. A. [1495]

*Master and servant—Common employment—"Common work"—"Special risk"—Omnibus collision on highway—Injury to conductress.*

A motor bus owned by the appellant corporation, on which the respondent in the course of her employment by the corporation was acting as a conductress, was run into from behind by another of the corporation's buses which was negligently driven by one of the corporation's drivers, and the respondent was injured. The buses were on different services, but a substantial portion of the routes followed in those services was common to both and they were timed to travel along the street where the accident happened at an interval of a minute. The street in question was one of the main thoroughfares of the city for traffic of all sorts:—

*Held*: the respondent had no "special interest" in the skill and caution of the negligent driver arising out of their relationship as fellow servants, but was the victim of a risk of the road which might equally well have arisen from the negligent conduct of any driver of any vehicle moving close behind the bus on which she was, and, consequently, the doctrine of common employment did not apply and the corporation were liable.

*Miller v. Glasgow Corpn.* ([1947] A. C. 368; [1947] 1 All E. R. 1), *distinguished*.—*GLASGOW CORPN. v. NEILSON*, [1947] 2 All E. R. 346; 111 J. P. 523; 63 T. L. R. 461; 91 Sol. Jo. 482. [1496]



# RATES AND RATING

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## CASES

*Rates and rating—Valuation—Agricultural dwelling-house—Limitation of value by amount in respect of the dwelling-house which may be deducted from wages—Local Government Act, 1929 (c. 17), s. 72.*

The ratepayer was a farmer who occupied two cottages in which two of his agricultural workers resided by virtue of their employment. By an Order, dated December 12, 1941, made by the Worcestershire Agricultural Wages Committee under the Agricultural Wages (Regulation) Acts, 1924 and 1940, these cottages were to be treated as worth 3s. a week each, and only 3s. could be deducted weekly for each cottage from the minimum wage paid to each worker. The assessment committee valued the cottages for rating purposes at higher values than they would have borne if they had been let at only 3s. a week each :—

*Held* : assuming that under s. 72 of the Local Government Act, 1929, consideration of competition to obtain the cottages by other farmers in the neighbourhood must be excluded so that the only hypothetical tenant who was to be taken into account was the farmer whose workman was residing in the cottage occupied by the farmer; that farmer might be prepared to pay a higher rent for the cottage than 3s. a week, and, therefore, the assessment committee was not limited in its valuation by the 3s. a week laid down by the Order under the Agricultural Wages (Regulation) Acts, 1924 and 1940, which were enacted for an entirely different purpose from that of the Local Government Act, 1929.

*Decision of Divisional Court* ([1946] 2 All E. R. 80), *affirmed*.—BOMFORD v. SOUTH WORCESTERSHIRE ASSESSMENT COMMITTEE, [1947] K. B. 575; [1947] 1 All E. R. 299; [1947] L. J. R. 660; 111 J. P. 202; 63 T. L. R. 141; 91 Sol. Jo. 192; 45 L. G. R. 239; 40 R. & I. T. 87, C. A. [1947]

*Rates and rating—Assessment—Basis—Profits basis—Electricity undertaking—Calculation of profits—Deduction of excess profits tax.*

Where the rateable value of a public undertaking is assessed on the profits basis, the whole of the sum payable by the undertaking in respect of excess profits tax should not be deducted from the gross receipts of the undertaking in estimating the rateable value of the undertaking, but the liability to pay excess profits tax is a factor which a rating authority is entitled to take into consideration with others in deciding what percentage of the net receipts should be allocated to tenants' profit when the net receipts are apportioned between hypothetical landlord, hypothetical tenant and rating authority: *per* TUCKER and COHEN, L.J.J., Lord OAKSEY, L.J., *dissenting*.

*Port of London Authority v. Orsett Union* ([1919] 1 K. B. 84), *overruled*.—*YEovil Rural District Council v. South Somerset and District Electricity Co., Ltd.*, [1947] 1 All E. R. 669; 177 L. T. 319; 111 J. P. 287; 63 T. L. R. 272; 91 Sol. Jo. 235; 45 L. G. R. 251; 40 R. & I. T. 146, 160, C. A. [1498]

*Rates and rating—Exemption—Lands belonging to a vicarage—Exemption from parochial rates under Inclosure Act—Exemption from general rate imposed by Rating and Valuation Act, 1925, s. 2—Rating and Valuation Act, 1925 (c. 90), ss. 2 (1), (2) and (3) (a), 64 (1) (b), (2) (a) and (b).*

By the (local) Ramsbury Inclosure Act, 1777, it was provided that all the lands belonging to the vicarage of Ramsbury should be exempted from all parochial taxes and duties so long as the vicar should perform the offices of the church as vicar for the poor of the parish without fee or reward. The question was whether this exemption operated to exempt lands of the vicarage from the general rate levied under the Rating and Valuation Act, 1925, s. 2, and, if so, whether the exemption applied to land which had been let on a 999 years' lease to the rural district council:—

*Held*: (i) the provision of the Act of 1777 exempted the lands of the vicarage from the general rate levied by the Rating and Valuation Act, 1925.

(ii) until a scheme had been made under s. 64 (2) of the Act of 1925 by the rating authority or the Minister, the exemption must continue.

(iii) the exemption extended to the lands of the vicarage which were let on a 999 years' lease to the rural district council, because the land still "belonged" to the vicarage even though a long leasehold interest had been imposed on the freehold interest.—*WILTSHIRE COUNTY VALUATION COMMITTEE v. BOYCE, WILTSHIRE COUNTY VALUATION COMMITTEE v. MARLBOROUGH & RAMSBURY RURAL DISTRICT RATING AUTHORITY*, [1947] K. B. 950; [1947] 1 All E. R. 820; 111 J. P. 431; 45 L. G. R. 343; 40 R. & I. T. 219, D. C. [1499]

*Rates and rating—Derating—Industrial hereditament—Egg-packing station—Adapting for sale—Rating and Valuation (Apportionment) Act, 1928 (c. 44), s. 3 (1).*

Under a licence granted by the Minister of Food, home-produced eggs were taken to an egg-packing station in bulk, being ungraded and very dirty. They were cleaned, tested for soundness, sorted and graded by machinery according to weight, stamped, and packed in crates for collection by wholesalers to whom they were sold. It was an offence to sell home-produced eggs which had not been graded and stamped:—

*Held*: these processes were an adaptation for sale in that they made the eggs legally saleable and produced an article different in bulk from the original, and, therefore, the premises were an "industrial hereditament" within the meaning of the Rating and Valuation (Apportionment) Act, 1928, s. 3 (1).

*Kaye v. Burrows* ([1931] A. C. 477) and *Hines v. Eastern Counties Farmers' Co-operative Association, Ltd.* ([1931] A. C. 456), *followed*.—*RICHARDSON & SON v. MIDDLESBROUGH ASSESSMENT COMMITTEE*, [1947] K. B. 958; [1947] 1 All E. R. 884; 177 L. T. 103; 111 J. P. 357; 63 T. L. R. 413; 91 Sol. Jo. 265; 45 L. G. R. 321; 40 R. & I. T. 231, D. C. [1500]

*Rates and rating—Valuation list—Revaluation—Validity of large-scale revaluation—Proposals by county valuation committee to increase large proportion of assessments in area—Systematic examination of all assessments with a view to revaluation—Rating and Valuation Act, 1925 (c. 90), s. 37 (1).*

In December, 1940, the respondent county valuation committee, being of opinion that the general level of existing assessments in its rating area

was too low, made proposals to increase the assessments of between forty and fifty houses, and in November, 1941, these proposals were approved by the assessment committee. Between December, 1941, and December, 1942, the valuation committee made proposals relating to 577 hereditaments, the assessments in respect of which, with few exceptions, were increased by the assessment committee. In addition to these proposals, 618 further hereditaments were inspected on behalf of the valuation committee, and systematic inspection was continuing of all hereditaments. One of the proposals allowed by the assessment committee was that the gross value of a hereditament belonging to the appellant should be increased from £14 to £20 and the rateable value from £8 to £12. In making this and all other proposals, the valuation committee were purporting to act under the Rating and Valuation Act, 1925, s. 37, which provides: "(1) Any person (including the county valuation committee and any local authority) who is aggrieved by the incorrectness or unfairness of any matter in the valuation list for the time being in force, or by the inclusion therein or omission therefrom of any matter . . . or otherwise with respect to the list, may make in manner provided by this section a proposal for the amendment of the list . . ."

*Held*: the proposal to increase the appellant's assessment was within the plain meaning of s. 37, and, although it might well be that the legislature did not contemplate the making of wholesale proposals as a normal operation of the section, it was impossible to find anything in the Act which rendered such proposals illegal.

*Per Lord UTHWATT*: a proposal for an amendment of a specific entry is not altered in character by reason that it forms part of a series of cases calling for alterations in value due to an identical or general cause, and, however numerous the amendments, the valuation list retains its character as the current valuation list.

*Decision of THE COURT OF APPEAL* ([1946] 1 All E. R. 4), *affirmed*.

*Camberwell Assessment Committee v. Ellis* ([1900] A. C. 510), *distinguished*.

*R. v. Horsham and Worthing Assessment Committee, Ex parte Burgess* ([1937] 2 K. B. 408), *discussed*.—*PRATT v. NORTH WEST NORFOLK ASSESSMENT COMMITTEE*, [1947] A. C. 635; [1947] 1 All E. R. 920; [1947] L. J. R. 905; 177 L. T. 436; 111 J. P. 393; 63 T. L. R. 285; 91 Sol. Jo. 309; 45 L. G. R. 373, H. L. [1501]

*Rates and rating—Distress for rates—Rating period not expired—Poor Relief Act, 1601 (c. 2), s. 2.*

A general rate is payable as soon as it is made and published, and, therefore, a distress warrant in respect of it may be issued although the period covered by the rate has not expired.

*Davis v. Burrell and Lane* ((1851) 10 C. B. 821), *applied*.—*THOMSON v. BECKENHAM BOROUGH RATING AUTHORITY*, [1947] K. B. 802; [1947] 2 All E. R. 274; 177 L. T. 269; 111 J. P. 467; 63 T. L. R. 482; 91 Sol. Jo. 459; 45 L. G. R. 516, D. C. [1502]

*Rates and rating—Valuation list—Amendment—Appearance before assessment committee—County valuation committee—Officer authorised by general resolution of valuation committee—Rating and Valuation Act, 1925 (c. 90), s. 31 (9).*

*Statutes—Construction—Headings and marginal notes—Reference to.*

A ratepayer made a proposal under s. 37 of the Rating and Valuation Act, 1925, for the amendment of the valuation list, contending that his factory should be derated, and at the same time the rating authority made a proposal to the assessment committee that the valuation should be increased. On both these matters coming before the assessment committee at their meeting, the county valuation officer appeared, and claimed the right to represent the views of that committee by virtue of a general resolution

passed by the county valuation committee. The assessment committee refused to hear the valuation officer on the ground that the proposals had not been expressly before the county valuation committee, and they had not specially authorised the valuation officer to appear at the hearing. On motions for orders of *certiorari* and *mandamus* directed to the assessment committee :—

*Held*: although the marginal note to s. 31 of the Act read : “ Appeals to quarter sessions ”, and the section mainly dealt with such appeals, sub-s. (9) of the section was not confined to those appeals, but gave the valuation committee power by general resolution to authorise any officer to institute, carry on and defend any proceedings whatsoever in relation to the valuation list, and, consequently, orders for *certiorari* and *mandamus* must go.—*R. v. SURREY (NORTH EASTERN AREA) ASSESSMENT COMMITTEE, Ex parte SURREY COUNTY VALUATION COMMITTEE*, [1947] 2 All E. R. 276 ; 177 L. T. 441 ; 111 J. P. 470 ; 63 T. L. R. 492 ; 91 Sol. Jo. 494 ; 45 L. G. R. 519. [1503]

## RATS AND MICE

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### ORDERS, CIRCULARS AND MEMORANDA

#### TRANSFER OF FUNCTIONS (INFESTATION CONTROL) ORDER, 1947

*S. R. & O.*, 1947, No. 1705

*August 8, 1947*

His Majesty, in pursuance of subsection (1) of section one of the Ministers of the Crown (Transfer of Functions) Act, 1946, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows :—

1.—(1) This Order may be cited as the Transfer of Functions (Infestation Control) Order, 1947.

(2) The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

(3) This Order shall come into operation on the first day of September, nineteen hundred and forty-seven.

(4) This Order shall not extend to Scotland or to Northern Ireland. [1504]

2. There are hereby transferred to the Minister of Agriculture and Fisheries :—

(a) the functions of the Minister of Health under the Rats and Mice (Destruction) Act, 1919 (being functions transferred to that Minister by the Ministry of Health (Rats and Mice Destruction, Transfer of Powers) Order, 1922) except in so far as those functions are exercisable in relation to vessels employed in trading or going between some place in the United Kingdom, the Channel Islands, or the Isle of Man and some place situate elsewhere ;

(b) the functions of the Minister of Food under the Rats and Mice (Destruction) Act, 1919 (being functions transferred to that Minister by the Ministers of the Crown (Minister of Food) Order, 1942) ;

(c) the functions of the Minister of Food under the Infestation Order, 1943, as amended under any subsequent order. [1505]

3.—(1) All property and rights held or enjoyed by the Minister of Health or the Minister of Food immediately before the coming into operation of this Order in connection with any of the functions hereby transferred, and all liabilities to which the Minister of Health or the Minister of Food was then subject in connection with any of those functions, are hereby transferred to the Minister of Agriculture and Fisheries.

(2) In the construction and for the purposes of any enactment, judgment, order, deed, contract, certificate or other document passed or made before the coming into operation of this Order, any reference to, or which is to be construed as a reference to, the Minister of Health or his officers or department or the Minister of Food or his officers or department shall, so far only as may be necessary for or in consequence of the transfer of functions effected by this Order, be construed as a reference to the Minister of Agriculture and Fisheries or his officers or department.

(3) The transfer of functions effected by this Order shall not prejudice the operation of any order, appointment, direction, instruction, approval, requirement, authorisation or other thing made, given or done by the Minister of Health or the Minister of Food, in relation to the functions transferred by this Order and before the coming into operation thereof, but any such matter shall, if then in force, continue in force to the like extent and subject to the like provisions as if it had been duly made, given or done by the Minister of Agriculture and Fisheries.

(4) Anything commenced before the coming into operation of this Order by or under the authority of the Minister of Health or the Minister of Food may, so far as it relates to any functions transferred by this Order, be carried on or completed by or under the authority of the Minister of Agriculture and Fisheries.

(5) Where at the coming into operation of this Order any legal proceeding is pending to which the Minister of Health or the Minister of Food is a party and the proceeding has reference to any of the functions transferred by this Order, the Minister of Agriculture and Fisheries shall be substituted in the proceeding for the Minister of Health or the Minister of Food, as the case may be, and the proceeding shall not abate by reason of the substitution.

[1506]

\* \* \* \* \*

#### EXPLANATORY NOTE

*(This Note is not part of the Order, but is intended to indicate its general purport.)*

*The Minister of Agriculture and Fisheries was originally the Minister responsible for the enforcement of the Rats and Mice (Destruction) Act, 1919. In 1922 his functions in respect of port sanitary districts and vessels were transferred to the Minister of Health. In 1942 the remaining functions of the Minister of Agriculture and Fisheries under the Act, except so far as they were exercisable in rural districts, were transferred to the Minister of Food. The Minister of Food was also empowered by the Infestation Order, 1943, made under the Defence (General) Regulations, to control infestation by rats, mice and food pests.*

*This Order transfers all the functions of control of rats, mice and food pests in England and Wales to the Minister of Agriculture and Fisheries with the exception of the powers of the Minister of Health in relation to vessels employed in trading, or going, between some place in the United Kingdom, the Channel Islands or the Isle of Man and some place situate elsewhere.*

# REGISTRATION OF BIRTHS, DEATHS AND MARRIAGES

STATUTES :—

Births and Deaths Registration Act, 1947

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## STATUTES

### BIRTHS AND DEATHS REGISTRATION ACT, 1947

(10 &amp; 11 Geo. 6, c. 12)

#### PRELIMINARY NOTE

This short Act, which was brought into force on December 15, 1947, by Order in Council (S. R. & O., 1947, No. 2463), removes a source of hardship to persons of illegitimate birth or of adopted parentage by authorising the issue of a new type of birth certificate omitting references to parentage or adoption.

Hitherto there has been only one type of birth certificate, *i.e.* a certified copy of the entry either in a local birth register or in the central register of certified copies kept at the General Register Office (Births and Deaths Registration Act, 1836, ss. 35 and 38, and the Births and Deaths Registration Act, 1874, s. 32; 15 Halsbury's Statutes 707, 708, 746).

A birth certificate thus contains all the particulars required to be registered on the registration of a birth, namely: (i) date and place of birth; (ii) name (if any) and sex; (iii) name, surname and rank or profession of father; (iv) name and maiden surname of mother; (v) signature, description and residence of informant; (vi) date of registration; and (vii) signature of registrar (Births and Deaths Registration Act, 1836, Sched. A; the Births and Deaths Registration Act, 1874, s. 47, and the Registration (Births, Stillbirths, Deaths and Marriages) Consolidated Regulations, 1927; 15 Halsbury's Statutes 710, 752, 775). In addition to these particulars, a birth certificate may also provide evidence of adoption. Where, on an application for an adoption order, the date of an infant's birth and the identity of the infant with a child to which an entry in the register relates is established, the order must direct the entry to be marked "adopted," and any certified copy of the entry made thereafter is to include that addition (Adoption of Children Act, 1926, s. 11 (3), and regs. 54 and 55 of the above-mentioned Regulations; 9 Halsbury's Statutes 831 and 15 Halsbury's Statutes 789).

In a large number of cases, as, for example, on application for employment, the production of a birth certificate is required only as evidence of age. In such circumstances the disclosure of the full particulars contained in the certificate has not only imposed upon persons of illegitimate birth or adopted parentage unnecessary embarrassment, but has been known to lead to their being refused or dismissed from employment.

Following a successful experiment in Scotland from 1934 onwards, the present Act provides for the issue by the Registrar General, superintendent registrars and registrars of abbreviated certificates at a reduced fee (in addition to the normal form of certificate) in which only the name, surname, sex and date of birth, with such other particulars as may be prescribed but not including particulars relating to parentage or adoption, are to appear.

Apart from search fees, the fee payable for the shortened form of certificate will be sixpence as against the normal 2s. 6d. (Births and Deaths Registration Act, 1836, ss. 35 and 37, and the Births and Deaths Registration Act, 1874, s. 32 and Sched. II; 15 Halsbury's Statutes 707, 708, 746, 754) plus a stamp duty of one penny (Stamp Act, 1891, s. 64 and Sched. I: "Copy or Extract (*certified*)"; 16 Halsbury's Statutes 637, 667), making a total of 2s. 7d. This comparative cheapness is designed to popularise the new certificate and so avoid application for such certificates being confined to persons who wish to conceal their illegitimacy or adoption, which would frustrate the purpose of the Act. In this connection the Parliamentary Secretary to the Ministry of Health, in moving the Second Reading of the Bill, expressed the hope that the new certificate would rapidly come to be



regarded as the normal form for use on all occasions where only evidence of age was required. He added: "I understand that it will be normally acceptable to the Civil Service Commission and to the Passport Office, and for the purposes of the Shops and Factories Acts. I am confident that it will be generally accepted also by education authorities, and I see no reason to believe that employers will refuse to recognise it as well" (432 H. of C. Official Report 2113).

Subsidiary matters, such as the form and detailed contents of the new certificate, the particulars to be furnished by applicants and the manner in which certificates are to be compiled are the subject of regulations by the Registrar General with the Minister's consent (see S. R. & O., 1947, Nos. 2501 and 2675). [1507]

*An Act to provide for an additional type of birth certificate.* [1508]

[11th March 1947.]

**1. Shortened form of birth certificate.**—(1) Any person shall, on payment of a fee of sixpence and on furnishing the prescribed particulars, be entitled to obtain from the Registrar General, a superintendent registrar or a registrar a certificate in the prescribed form of the birth of any person compiled from the records and registers in the custody of the Registrar General, or from the registers in the custody of that superintendent registrar or registrar, as the case may be. [1509]

(2) The power conferred by section forty-four of the Births and Deaths Registration Act, 1874, on the Minister of Health, or the Registrar General with the consent of the Minister of Health, to make regulations shall include power to make regulations prescribing the forms of certificate to be issued under this section, the particulars to be furnished by applicants for certificates thereunder, the manner in which those certificates are to be compiled, and the particulars which are to be contained therein, so, however, that no certificate issued under this section shall include any particulars except the name, surname, sex and date of birth and such other particulars, if any, as may be prescribed, not being particulars relating to parentage or adoption. [1510]

*Registrar General.*—The Registrar General is appointed by the Crown under the Births and Deaths Registration Act, 1836, s. 2 (15 Halsbury's Statutes 700), and is subject to such regulations as may from time to time be made by the Minister of Health for the management of the General Register Office (s. 5 of that Act). As to his duties generally, see 28 Halsbury's Laws (2nd Edn.) 120 *et seq.*

*Superintendent registrar and registrar.*—Superintendent registrars and registrars are appointed by the local authorities responsible for the administration of the Registration Acts (Births and Deaths Registration Act, 1836, s. 7, and the Local Government Act, 1929, s. 21; 15 Halsbury's Statutes 701 and 10 Halsbury's Statutes 898).

*Births and Deaths Registration Act, 1874, s. 47.*—15 Halsbury's Statutes 751.

*Search fees.*—To obtain the prescribed particulars required to be furnished in an application for a certificate, it may be necessary for the applicant to search the indexes of the registers and records kept at the General Register Office. The fees payable for a search are as follows:—for every general search (*i.e.* a search during any number of successive hours, not exceeding six, without stating the object of the search) £1, and for every particular search (*i.e.* a search over any period not exceeding five years for any given entry) 1s. (Births and Deaths Registration Act, 1836, s. 37, and Births and Deaths Registration Act, 1874, s. 42; 15 Halsbury's Statutes 708, 751).

*Form of certificate.*—The Registrar General with the consent of the Minister of Health has made the Birth Certificate (Shortened Form) Regulations, 1947 (S. R. & O., 1947, No. 2501) and the Birth Certificate (Shortened Form) (No. 2) Regulations, 1947 (S. R. & O., 1947, No. 2675) by which the appropriate forms are prescribed.

**2. Short title, citation, construction, commencement and extent.**—(1) This Act may be cited as the Births and Deaths Registration Act, 1947, and shall be construed as one with the Births and Deaths Registration Acts, 1836 to 1929, and those Acts and this Act may be cited together as the Births and Deaths Registration Acts, 1836 to 1947. [1511]

(2) This Act shall come into force on the first day of January, nineteen hundred and forty-eight, or such earlier date as His Majesty may by Order in Council appoint. [1512]

(3) This Act shall not extend to Scotland or Northern Ireland. [1513]



*Births and Deaths Registration Acts, 1836 to 1929.*—The Births and Deaths Registration Acts, 1836, 1837, 1838, 1874 and 1926 (15 Halsbury's Statutes 700, 712, 736, 737, 768), and the Local Government Act, 1929, Part II (10 Halsbury's Statutes 898).

*Construed as one.*—Accordingly, this Act is to be construed as if it were contained in the Births and Deaths Registration Acts, 1836 to 1929, *supra*, unless there is any manifest discrepancy showing that this Act has modified something to be found in the earlier Acts (*Canada Southern Ry. Co. v. International Bridge Co.* (1883), 8 App. Cas. 723, at p. 727; *Hart v. Hudson Brothers, Ltd.*, [1928] 2 K. B. 629, at p. 634; *Phillips v. Parnaby*, [1934] 2 K. B. 299, at p. 302). Thus words defined in the earlier Acts will bear the like meaning in this Act unless it is clear from the context that their construction in this Act is different. This Act is the latest of a series of Acts dealing with the registration of births and deaths and any amendments effected by this Act should be construed consistently, if that be possible, with any scheme which can be seen in clear outline from the Acts (*Fendoch Investment Trust Co. v. I. R. C.*, [1945] 2 All E. R. 140, at p. 144, *per* Lord SIMONDS).

*Date of operation.*—On November 13, 1947, an Order in Council (S. R. & O., 1947, No. 2463), made pursuant to sub-s. (2), *ante*, ordered that the present Act should come into force on December 15, 1947.

## REGULATED INDUSTRIES, TRADES AND BUSINESSES

ORDERS, CIRCULARS AND MEMORANDA :—

Livestock (Restriction on Slaughtering) Order, 1947 -

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### ORDERS, CIRCULARS AND MEMORANDA

#### LIVESTOCK (RESTRICTION ON SLAUGHTERING) ORDER, 1947

S. R. & O., 1947, No. 1079

June 2, 1947

In exercise of the powers conferred upon him by Regulation 55 of the Defence (General) Regulations, 1939, as having effect by virtue of the Supplies and Services (Transitional Powers) Act, 1945, and of all other powers him enabling, the Minister of Food hereby makes the following Order :—

#### 1. In this Order :—

“The Minister” means the Minister of Food.

“Collecting Centre” has the same meaning as in the Livestock (Sales) Order, 1943.

“District Chairman of Auctioneers” means the person appointed by the Minister to act as District Chairman of Auctioneers at a Collecting Centre.

“Government Slaughterhouse” means a slaughterhouse at which cattle are slaughtered on behalf of the Minister.

“Livestock” means steers, bulls, cows, cow-heifers, heifers, calves, sheep (including rams, ewes and lambs) and pigs.

“Knackers Yard” has, in England and Wales the meaning assigned to it by Section 100 of the Food and Drugs Act, 1938, and in Scotland the meaning assigned to it by Section 3 of the Public Health (Scotland) Act, 1897.

“Meat” means beef, mutton, lamb, veal, pork and edible offals derived from cattle, sheep and pigs; and also includes, for the purposes of Article 6 of this Order only, horseflesh. [1514]

2.—(1) Except under and in accordance with the terms and conditions of a licence granted by or under the authority of the Minister, no person shall slaughter or cause to be slaughtered for human consumption any livestock.

(2) In any proceedings in respect of any contravention of this Article the slaughter of any livestock in question shall be deemed to have been a slaughter for human consumption unless and until the contrary shall have been proved. [1515]

3. The restriction on the slaughter of livestock imposed by Article 2 hereof shall not apply to—

- (i) slaughter of any livestock under the provisions of the Diseases of Animals Acts, 1894 to 1937 ;
- (ii) slaughter of any livestock where the slaughter is immediately necessary or desirable on account of accidental injury to, or the illness of, that livestock ;
- (iii) slaughter in the county of Zetland for consumption in the household of a resident in the said county between the 1st day of August and the 31st day of December in any year of any lamb born in that year in that county and sold alive to that resident :

Provided that the seller shall in no case slaughter or cause to be slaughtered any such lamb so sold. [1516]

4.—(1) Where any livestock has been slaughtered pursuant to Article 3 (ii) hereof the owner of that livestock at the time of slaughter or some person on his behalf shall either—

- (a) give notice of the slaughter within 24 hours of slaughter to the District Chairman of Auctioneers at the Collecting Centre nearest to the place of slaughter, or
- (b) deliver or cause to be delivered the carcase of the livestock within 24 hours of slaughter to the Government Slaughterhouse nearest to the place of slaughter between the hours of 8 a.m. and 4 p.m. on Mondays to Fridays inclusive and 8 a.m. and 1 p.m. on Saturdays ; or to such other place as may be designated by a person authorised in that behalf by the Minister :

provided that (1) the said period of 24 hours shall not in any case include Sunday or a public holiday ; and (2) that the manager of a Government Slaughterhouse may refuse to accept delivery of any carcase which in his opinion is not fit for human consumption.

(2) Where notice of the slaughter of any livestock has been given to a District Chairman of Auctioneers pursuant to paragraph (1) (a) of this Article, a person shall not sell or otherwise dispose of the carcase of the livestock or any part thereof except in accordance with instructions or directions in relation thereto given by the said District Chairman of Auctioneers or by some other person authorised by the Minister to give such instructions or directions.

(3) Nothing in this Article shall affect any obligation imposed upon the owner or slaughterer of any livestock by any Order or Regulation relating to the inspection of meat or to public health. [1517]

5.—(1) Subject to the provisions of this Order, except under and in accordance with the terms and conditions of a licence granted by or under the authority of the Minister, no person shall, by way of or for the purposes of trade in meat for human consumption :

- (a) buy or agree or offer to buy any meat except from the Minister or from a person selling on his behalf or under his authority ; or
- (b) be in possession of, sell, or offer or agree to sell, or expose for sale, or otherwise dispose of, any meat, unless that meat has, prior to such possession, sale or other disposition, offer or agreement to sell, or exposure for sale, been purchased from the Minister or from a person selling on his behalf or under his authority.

(2) In any proceedings in respect of any contravention of this Article the meat in question shall be deemed not to have been purchased from the Minister or from a person selling on his behalf or under his authority, unless and until the contrary shall have been proved : provided that it shall be a defence for the person charged to prove that he had reasonable grounds for believing that, as the case may be, he was buying or offering or agreeing to buy the meat from the Minister or from a person selling on his behalf or under his authority, or that prior to the possession, sale or other disposition, offer or agreement to sell, or exposure for sale, by him of the meat, it had been bought from the Minister or from a person selling on his behalf or under his authority. [1518]

6.—(1) All meat derived—

- (a) from horses or livestock slaughtered for a purpose other than that of human consumption ;
- (b) from horses or livestock not being meat which is fit for human consumption ;
- (c) from horses or livestock slaughtered in a knacker's yard ; and
- (d) from the carcase or any part thereof of any horse or livestock delivered to a knacker's yard ;

shall, as soon as practicable after slaughter or death and before leaving the place of slaughter or death, as the case may be, be treated by or on behalf of the owner thereof in the prescribed manner, and no person shall sell or otherwise dispose of or offer or expose for sale any such meat unless it shall have been so treated :

Provided that in any such case as aforesaid it shall be a sufficient compliance with the provisions of this Article if the meat in question is treated in the prescribed manner in a knacker's yard within 24 hours of slaughter or death, as the case may be.

(2) " The prescribed manner " means the manner following, that is to say : the meat (after opening quarters and all large joints by incision) shall be treated with one or other of the following colouring agents in solution, namely, Naphthalene Green G.S., or Acid Green, G. (such solution to be at the strength of not less than half an ounce or two level teaspoonfuls of colouring agent to one gallon of water) or with such other colouring agent in solution as shall have been approved by the Minister, and the meat shall be treated either by immersing it in the solution or by spraying or otherwise applying the solution so that the whole surface of the meat is covered.

(3) This Article shall take effect subject to the provisions of the Diseases of Animals Acts, 1894 to 1937, and of any Orders or Regulations made thereunder. [1519]

7. Infringements of this Order are offences against the Defence (General) Regulations, 1939. [1520]

8. This Order shall not apply to Northern Ireland. [1521]

9.—(1) The provisions of this Order are subject to—

- (a) any directions which may at any time be given by or on behalf of the Minister in relation to the articles to which this Order applies ; and
- (b) any licence or authorisation which may be granted under this Order by or on behalf of the Minister.

(2) Every person holding a licence or authorisation granted under this

Order shall comply with every condition imposed by that licence or authorisation.

(3) Every licence or authorisation granted under this Order is and shall remain the property of the Minister and the licensee or any person being in possession of any such licence or authorisation shall, if requested to do so by or on behalf of the Minister, produce that licence or authorisation or deliver it to such person or to a person of such class or description at such time as may be specified in the request. [1522]

10. The Livestock (Restriction on Slaughtering) (No. 2) Order, 1940, as amended, is hereby revoked, but without prejudice to any proceedings in respect of any contravention thereof :

Provided that any licence or authorisation granted by or on behalf of the Minister under the said Order, and subsisting immediately before the coming into force of this Order, shall continue to have effect as though granted under this Order. [1523]

11. This Order shall come into force on the 8th day of June, 1947, and may be cited as the Livestock (Restriction on Slaughtering) Order, 1947. [1524]

\* \* \* \* \*

#### EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

*This Order consolidates with amendments the Livestock (Restriction on Slaughtering) (No. 2) Order, 1940, as amended. The following are the principal changes in the Order :—*

- (1) *The period within which the owner of any livestock which has been slaughtered on account of accidental injury to, or illness of, that livestock is required to notify the District Chairman of Auctioneers at the nearest Collecting Centre is reduced from 48 hours to 24 hours ;*
  - (2) *As an alternative to notifying the District Chairman of Auctioneers the owner may deliver the carcase within 24 hours of slaughter to the nearest Government Slaughterhouse between specified hours or to such other place as may be designated by a person authorised by the Minister ;*
  - (3) *The prohibition of the purchase by way of trade except from the Minister or from a person selling on his behalf, of any meat derived from livestock slaughtered in Great Britain is extended to apply to all meat, i.e. including imported meat ;*
  - (4) *The requirement that meat derived from horses or livestock which is not fit for human consumption shall be stained in the prescribed manner before leaving the place of slaughter or death is extended to make it clear that it applies to meat derived from horses and livestock which have been slaughtered in a knacker's yard and which might be fit for human consumption, though its use for this purpose is prohibited by Section 19 (1) of the Food and Drugs Act, 1938.*
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# ROAD TRAFFIC

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## STATUTES

### ROAD TRAFFIC (DRIVING LICENCES) ACT, 1947

(10 & 11 Geo. 6, c. 8)

#### PRELIMINARY NOTE

The Road Traffic (Driving Licences) Act, 1947, which received the Royal Assent and came into operation on February 18, 1947, restores the pre-war procedure as to the granting of provisional driving licences, exempts certain holders of war-time provisional licences from the requirement of being tested, and amends the existing provisions as to the destination of fees for driving tests.

The Road Traffic Act, 1930, s. 5 (3) (23 Halsbury's Statutes 614), as amended by the Road Traffic Act, 1934, s. 6 (2) (27 Halsbury's Statutes 451), authorised the issue of provisional driving licences (to be in force for three months) to applicants for licences for enabling them to learn to drive motor vehicles with a view to passing a test as to their physical fitness, ability or competence to drive. Holders of such licences were required by r. 16 (3) of the Motor Vehicles (Driving Licences) Regulations, 1937 (S. R. & O., 1937, No. 438 ; 30 Halsbury's Statutes 864), to carry " L " plates, to be accompanied by an experienced driver, and, in the case of motor bicycles without sidecars, not to carry any passenger other than such driver. First, these conditions were removed by the Motor Vehicles (Driving Licences) (Amendment) Provisional Regulations, 1940, dated May 29, 1940, and later, by Regulation 72 (6) of the Defence (General) Regulations, 1939 (S. R. & O., 1939, No. 927 ; 39 Halsbury's Statutes 1053), the above provisions as to the actual issue of provisional licences were suspended, and provision was made for licences to be issued for any purpose, and to be valid for twelve months.

S. 1 of the present Act revokes the above Regulation 72 (6) and accordingly restores the previous law as to the granting of provisional licences, though licences in force at the date of the revocation, namely, February 18, 1947, are not affected. The conditions attaching to the grant of provisional licences (see *supra*) were reimposed by the Motor Vehicles (Driving Licences) (Amendment) Provisional Regulations, 1947, dated February 18, 1947, later revoked and consolidated with other Regulations in the Motor Vehicles (Driving Licences) Regulations, 1947 (S. R. & O., 1947, No. 925), *post*.

So many persons were granted provisional licences under the emergency provisions referred to above that it would be administratively impossible to test them

all within any reasonable space of time. The majority, moreover, drove during the war under difficult conditions and have by now become experienced drivers (see H. of C. Official Report 1622, 1623). S. 2 of the Act therefore exempts from the requirement of passing the driving test imposed by s. 6 of the Road Traffic Act, 1934 (27 Halsbury's Statutes 540), applicants for licences who have held provisional licences granted on or after October 18, 1940 (the date of the coming into force of Defence Regulation 72 (6), *ante*) for a period of not less than twelve months before the passing of the present Act, if they apply within twelve months thereafter. Exemption will not, however, be granted to holders of provisional licences who have been convicted of certain offences, and licences will only be granted under this provision for the driving of such kinds of vehicle as the applicants satisfy the licensing authorities that they were in the habit of driving before the passing of the present Act while they were holders of provisional licences.

The position as to fees for driving tests is also changed. S. 3 of the Act, amending s. 6 (5) of the Road Traffic Act, 1934 (27 Halsbury's Statutes 542), empowers the Minister of Transport to prescribe by regulation the persons to whom fees for driving tests are to be paid and to provide for the payment of such fees by them into the Exchequer. Regulation 14 of the Motor Vehicles (Driving Licences) Regulations, 1947 (S. R. & O., 1947, No. 925), *post*, makes provision in this respect. [1525]

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*An Act to revoke certain emergency provision as to licences to drive motor vehicles, and make provision with respect to the grant of such licences to persons who have held such licences under the emergency provision; and to amend the law as to the destination of fees in respect of driving tests.* [1526]

[18th February 1947.]

**1. Revocation of emergency provision as to provisional licences.**—Paragraph (6) of Regulation seventy-two of the Defence (General) Regulations, 1939 (which regulates the granting of provisional licences during the continuance in force of that paragraph) is hereby revoked:

Provided that the revocation of the said paragraph shall not affect the operation or continuance in force of a provisional licence in force at the commencement of this Act. [1527]

*Effect of section.*—See Preliminary Note, *ante*.

*Defence (General) Regulations, 1939, Regulation 72 (6).*—See 39 Halsbury's Statutes 1053. For the effect of this paragraph, which was added to the Regulation on October 11, 1940, by S. R. & O., 1940, No. 1826, see Preliminary Note, *ante*.

**2. Rights of persons who have held provisional licences under emergency provision on subsequent applications for licences.**—(1) Where a person has been the holder for any continuous period of twelve months elapsing before the commencement of this Act of a provisional licence granted on or after the eighteenth day of October, nineteen hundred and forty, and he has duly made an application for a licence within the twelve months beginning with the commencement of this Act, the provisions of the Road Traffic Act, 1930, and the Road Traffic Act, 1934, as to the grant of licences shall have effect as respects that application, and any subsequent application of his for a licence, as if he had passed the test of competence to drive prescribed for the purposes of section six of the Road Traffic Act, 1934:

Provided that this subsection shall not apply to a person who has been

convicted, in respect of any act or omission done or occurring whilst he was the holder of a provisional licence granted as aforesaid, of—

- (a) manslaughter, or culpable homicide, in connection with the driving of a motor vehicle ;
- (b) causing any bodily harm to any person in connection with the driving of a motor vehicle ;
- (c) an offence under section eleven of the Road Traffic Act, 1930 (which relates to reckless or dangerous driving) ;
- (d) an offence under section twelve of that Act (which relates to careless driving) ; or
- (e) an offence under section fifteen of that Act (which relates to driving when under the influence of drink or drugs) ;

as respects any application made after the conviction. [1528]

(2) The preceding subsection shall apply only to the driving of vehicles of the class or description or classes or descriptions comprising such vehicle or vehicles as the person in question satisfies the licensing authority that he was in the habit of driving before the commencement of this Act whilst he was the holder of a provisional licence granted as aforesaid and in accordance with the terms of his provisional licence, and accordingly—

- (a) references in the preceding subsection to an application for a licence shall be construed as excluding references to an application for a licence which would authorise the applicant to drive vehicles of any other class or description ; and
- (b) a licence granted by virtue of the preceding subsection shall be limited to the driving of vehicles of that class or description or of those classes or descriptions, and that restriction shall be specified in the prescribed manner on the licence and the holder thereof shall be deemed not to be the holder of a licence to drive motor vehicles of any other class or description. [1529]

*Effect of section.*—See Preliminary Note, *ante*.

October 18, 1940.—This was the date on which Regulation 72 (6) of the Defence (General) Regulations, 1939, came into force and suspended the normal procedure for the grant of provisional licences.

*Road Traffic Act, 1930.*—23 Halsbury's Statutes 607. For provisions as to grant of licences, see ss. 4 and 5 thereof (23 Halsbury's Statutes 611, 612).

*Road Traffic Act, 1934.*—27 Halsbury's Statutes 534. For provisions as to grant of licences, see s. 6 thereof (27 Halsbury's Statutes 540).

*Application for licence.*—For amended form of application for a licence to drive a motor vehicle, giving effect to the provisions of this Act, see the Motor Vehicles (Driving Licences) Regulations, 1947 (S. R. & O., 1947, No. 925), *post*.

### 3. Amendment as to destination of fees in respect of driving tests.—

(1) Fees in respect of tests of competence to drive for the purposes of section six of the Road Traffic Act, 1934, payable by virtue of regulations made under subsection (5) of that section shall be paid to such person as may be prescribed by regulations so made, and any such fees received by a person so prescribed (other than any as to which the regulations provide that they are to be paid to the person conducting the test and retained by him as remuneration) shall be paid into the Exchequer. [1530]

(2) In accordance with the preceding subsection the words “ to the person conducting the test ” in paragraph (b) of the said subsection (5) are hereby repealed. [1531]

*Effect of section.*—See Preliminary Note, *ante*.

*Road Traffic Act, 1934, s. 6.*—27 Halsbury's Statutes 540. The Minister of Transport is empowered by s. 6 (5) (b) (27 Halsbury's Statutes 542) to make regulations for requiring a person submitting himself for a test to pay to the person conducting the test such fee, not exceeding ten shillings, as may be specified in the regulations. The words “ to the person conducting the test ” are repealed by the present section, which empowers the Minister to prescribe by regulations the person to whom the fees shall be paid. See now the Motor Vehicles (Driving Licences) Regulations, 1947 (S. R. & O., 1947, No. 925), Regulation 14, *post*.



**4. Short title, construction and extent.**—(1) This Act may be cited as the Road Traffic (Driving Licences) Act, 1947, and this Act and the Road Traffic Acts, 1930 to 1937, may be cited together as the Road Traffic Acts, 1930 to 1947. [1532]

(2) In this Act the expression "licence" means a licence to drive a motor vehicle granted under Part I of the Road Traffic Act, 1930, and this Act shall be construed as one with the said Part I and with Part I of the Road Traffic Act, 1934. [1533]

(3) This Act shall not extend to Northern Ireland. [1534]

*Road Traffic Acts, 1930 to 1937.*—These are the Road Traffic Act, 1930 (23 Halsbury's Statutes 607); the Road Traffic Act, 1934 (27 Halsbury's Statutes 534); the Road Traffic (Driving Licences) Act, 1936 (29 Halsbury's Statutes 813); and the Road Traffic Act, 1937 (30 Halsbury's Statutes 819).

*Road Traffic Act, 1930, Part I.*—23 Halsbury's Statutes 607. For definition of "licence," see s. 4 (8) thereof (25 Halsbury's Statutes 612).

*Road Traffic Act, 1934, Part I.*—27 Halsbury's Statutes 535. For definition of "licence to drive a motor vehicle," see s. 6 (8) thereof (27 Halsbury's Statutes 542).

## TRANSPORT ACT, 1947

(10 & 11 Geo. 6, c. 49)

### PRELIMINARY NOTE

This Act, which implements part of the Government's programme of nationalisation, establishes the British Transport Commission as a public authority charged with the general duty of providing or securing the provision of an efficient, adequate, economical and properly integrated system of public inland transport. In addition to the provisions dealt with in this title, the Act, which consists of nine Parts and fifteen Schedules, contains provisions (Part II *et passim*) relating exclusively to railways and canals, which are outside the scope of this work, and provisions (ss. 66—71) dealings with harbours and coastal shipping for which reference should be made to the title **HARBOURS, DOCKS AND WHARVES, ante**. The principal effects of the Act, so far as road traffic is concerned, may be summarised as follows: (1) the Commission is placed under an obligation to acquire existing long distance road haulage undertakings; (ii) as from an appointed day, restrictions are imposed on the carriage of goods for hire or reward by persons other than the Commission; and (iii) area road transport schemes may be made for co-ordinating the local passenger transport services serving the area, whether by road or by rail, and for providing passenger road transport services suitable to the needs of the area.

With the exception of the restrictions referred to in (ii), *supra*, the provisions of the Act with which this title is concerned came into force at the date of its receiving the Royal Assent, namely, August 6, 1947.

Part I of the Act deals with the British Transport Commission. Many of the provisions relating to the Commission, in particular those dealing with the powers of the Minister of Transport in regard to it, are very similar to the provisions of other nationalisation Acts, for example, the Coal Industry Nationalisation Act, 1946 (39 Halsbury's Statutes 251) and the Electricity Act, 1947 (for which see the title **ELECTRICITY SUPPLY, ante**). The Commission is to consist of five to nine members (including a chairman) appointed by the Minister of Transport (s. 1). The powers of the Commission, which are set out in s. 2 in a form similar to the objects clause in the Memorandum of Association of a limited company, cover a wide range of powers relating to the provision of transport services and port facilities within Great Britain and the carrying on of activities ancillary thereto. Certain specific limitations are, however, placed on the powers of the Commission, including a restriction on the number of chassis and bodies for road vehicles which they may manufacture in any year, and the Commission are, subject to a minor exception, prohibited, *inter alia*, from (1) manufacturing anything not required for the use of the Commission; (2) purchasing a road vehicle for the purpose of sale; (3) trading in spare parts, accessories or petrol or oil for road vehicles; and (4) engaging in maintenance or repair work for road vehicles other than vehicles of the Commission. The Commission must allow users freedom of choice where there are different kinds

of regular goods transport services serving the same points (s. 3 (1)), and give not less than one month's notice of their intention to discontinue any such regular service by road (s. 3 (3)). Wide powers of giving directions to the Commission are conferred on the Minister, including directions of a general character on matters affecting the national interest (s. 4). The Commission is to make an annual report which the Minister is to lay before each House of Parliament (s. 4 (7)).

Public authorities, known as Executives, are to be established to exercise as agents of the Commission functions delegated to them under a scheme made by the Commission and approved by the Minister. The Minister, in moving the Second Reading of the Bill, stated that the Commission were to be regarded as the policy instrument and the Executives were to carry out the management (431 H. of C. Official Report 1624). Each Executive will, like the Commission, consist of between five and nine members appointed by the Minister (s. 5, Sched. II). The numbers and names of the Executives will be such as the Minister may by order from time to time provide, but unless and until so provided the Executives will consist of five specified Executives, including a Road Transport Executive (s. 5 (3)). The Parliamentary Secretary to the Ministry of Transport stated during the Committee Stage of the Bill that it was highly probable that, on the coming into force of area road transport schemes under Part IV of the Act, a Road Passenger Executive would also be established (H. of C. Official Report, S.C.B., February 26, 1947, col. 452). Within the scope of its delegated powers an Executive is, except as between itself and the Commission, to be regarded as a principal (s. 5 (9)).

Next, there are to be a Central Transport Consultative Committee for Great Britain and for each area either a single Transport Users Consultative Committee for both passenger and goods traffic or a separate Committee for each of these classes of traffic (s. 6 (1)). The members of the Committees will be appointed by the Minister and must include, unless the Minister considers such representation in any particular case unnecessary, members appointed to represent agriculture, commerce, industry, shipping, labour and local authorities (s. 6 (4)).

Part III of the Act deals with the transport of goods by road. It will be remembered that the Road and Rail Traffic Act, 1933 (26 Halsbury's Statutes 870), which instituted a licensing system for goods vehicles, provided for three classes of licences. These three classes are (1) a public carrier's licence (an A licence) under which the holder is entitled, in accordance with s. 2 (2) of that Act, to carry goods for hire or reward, or for or in connection with his business as a carrier of goods; (2) a limited carrier's licence (a B licence) under which the holder is entitled, in accordance with s. 2 (3) of that Act, to carry goods either for or in connection with any trade or business carried on by him or, subject to such conditions as the licensing authority may impose, for hire or reward; and (3) a private carrier's licence (a C licence) under which the holder is entitled, in accordance with s. 2 (4) of that Act, to carry goods for or in connection with any trade or business carried on by him but not ordinarily for hire or reward. Part III of the present Act imposes on the Commission a duty (subject to the power to make exceptions in certain cases) to acquire all undertakings operating any A or B licence vehicles which come within a formula of acquisition laid down by the Act.

This formula is designed to include all those long distance road haulage undertakings whose activities should essentially be co-ordinated with rail transport (see H. of C. Official Report, S.C.B., March 13, 1947, col. 792). To come within this formula an undertaking must be one that in the opinion of the Commission (1) has been carried on during the whole or some part of 1946, and (2) has been engaged in that year, so far as it was engaged in the carriage of goods in goods vehicles (including A, B and C licence vehicles), predominantly in ordinary long distance carriage for hire or reward (s. 39 (1)). Undertakings operating C licence vehicles only do not fall within the formula of acquisition but, where an undertaking operating any A or B licence vehicles also operates a C licence vehicle, the carriage of goods in that vehicle is brought into the reckoning for determining whether or not the undertaking was predominantly engaged in ordinary long distance carriage for hire or reward.

Ordinary long distance carriage consists in the carriage of goods, whether in one or more vehicles, for a distance (a) which totals 40 miles or more, and (b) which takes the vehicle, or one or more of the vehicles as the case may be, at some point in the journey more than 25 miles from its operating centre (s. 39 (2)). It should be noted that both these conditions must be satisfied, and thus neither a journey for a total distance of 39 miles even though the vehicle travels more than 25 miles from its

operating centre, nor a journey for any number of miles within a twenty-five mile radius from that centre, comprises ordinary long distance carriage. In addition, the carriage of the following special types of goods are specifically excluded by the Act : (i) bulk liquids carried in special tanks ; (ii) goods of a special character, the carriage of which is regulated under any statutory provision (e.g., petroleum spirit) ; (iii) ordinary furniture removal ; (iv) meat ; (v) livestock ; (vi) felled timber carried in a specially constructed vehicle ; and (vii) abnormal indivisible loads carried in specially constructed vehicles and apparatus ancillary to those vehicles (s. 39 (1), proviso). The acquisition of any undertaking which it is the duty of the Commission to acquire is to be effected by means of a notice of acquisition served by the Commission on the person carrying on the undertaking (ss. 39 (1), 40 (1)). Provision is made, in cases where the person served contends that the undertaking is not one with respect to which a notice should be given, for the determination by the Transport Arbitration Tribunal of the question whether or not the notice is to have effect (s. 40 (3)). A person who considers that an undertaking carried on by him with respect to which the Commission fail or refuse to give a notice of acquisition is one which the Commission ought to acquire may also have the matter determined by the Arbitration Tribunal (s. 40 (4)).

For the purpose of arbitration proceedings, condition (2) of the formula of acquisition, *supra*, is deemed to be satisfied if, during 1946, either (i) the total weight of goods which were the subject of ordinary long distance carriage for hire or reward exceeded half the total weight of all the goods carried, or (ii) the receipts from ordinary long distance carriage for hire or reward exceeded half the total value of the services of those vehicles (including in that total a reasonable sum in respect of goods not carried for hire or reward and excluding any receipts in respect of any carriage for which no licence is required) (s. 41). Special modifications of the formula may be made for the purpose of facilitating the acquisition of any undertaking which was controlled by, or whose vehicles were hired to, the Minister through the Road Haulage Organisation which functioned during the period 1942—1946, if the person carrying on the undertaking so desires (s. 42). Special modifications of the formula are also applicable in the case of mergers (s. 43).

The date of transfer of an acquired undertaking will be either the date specified in the notice of acquisition, or, where arbitration proceedings are taken in accordance with s. 40 (2), either that date or one month after the Tribunal's finding, whichever is the later. The Commission are, however, given power to agree to the substitution of any other date, which will enable them, where desirable, to make the transfer coincide with the end of the undertaking's financial year (s. 44).

Subject to any agreement to the contrary, the general effect of a notice of acquisition is to transfer to the Commission : (a) "relevant property," namely, property held at the date of transfer for the purpose of the undertaking or where the operation of A or B licence vehicles is only one of the activities of the undertaking, property held wholly or partly for that activity, and (b) "relevant contracts," as analogously defined. Provision is, however, made in cases where an undertaking carries on some other activity in addition to that of operating A and B licence vehicles, whereby the transferor may secure the exclusion from transfer of any specific property or contract held or made partly for purposes of that other activity unless it is reasonably necessary to the Commission's purposes that it should be transferred (s. 45 (1)). In addition, the Commission have power to disclaim any relevant property acquired or any relevant contract made after November 19, 1945 (the day on which the Government announced their intention to nationalise the transport industry), which was not reasonably necessary for the purpose of the undertaking or was an act of unreasonable imprudence, and any disclaimed property or contract will be deemed never to have been a relevant property or contract (s. 46).

Compensation resulting from the transfer of an undertaking by virtue of a notice of acquisition will be payable by the Commission under four heads : (i) goods vehicles transferred ; (ii) property other than goods vehicles transferred ; (iii) partial or total cessation of business ; and (iv) where applicable, severance. The amount of compensation under head (i) will be the replacement cost of the vehicle as at the date of transfer, less a sum in respect of each complete year since the vehicle was first registered or used, the amount being subject to adjustment where the vehicle's condition differs materially from the normal condition of that type of vehicle (s. 47 (1)). The amount of compensation under head (ii) will be the market value, estimated as at the date of transfer and as if the Act had not been

passed (s. 47 (2)). The amount of compensation under head (iii) will be such sum as may be just, being not less than twice nor more than five times the undertaking's average net annual profit as defined in Sched. IX (s. 47 (3)). The amount of compensation under head (iv) will be a sum fairly representing the burden of the unavoidable increase in overhead expenses over the first five years (s. 47 (4)). The total amount due is to be provisionally ascertained as soon as possible after the date of transfer and a payment made of at least 90 per cent. thereof, any necessary adjustment being made when the net amount has been finally ascertained (s. 48 (1), (2)). Compensation will be satisfied by the issue of British Transport Stock except that, where the amount payable does not exceed £20,000, the payee is entitled to require £2,000 (or such lesser amount as may be payable) to be paid in cash (s. 48 (3)). Pending transfer an undertaking is to be carried on in the ordinary course of business, and the transferor may not without the previous consent of the Commission (which he must apply for where necessary) engage in certain specified transactions (s. 50).

In order that the Commission may be in a position to co-ordinate the long distance carriage of goods by road with carriage by rail, the Act imposes certain restrictions on the carriage of goods for hire or reward by persons other than the Commission. The original Bill imposed restrictions also on the carriage of goods otherwise than for hire or reward (*i.e.*, under B and C licences), but this provision, which provoked considerable opposition, was negatived on the Committee Stage. As from the appointed day (which day had not been appointed at the time of going to press) it is made a condition of every A and B licence that, except in accordance with a permit from the Commission, goods shall not be carried for hire or reward in any authorised vehicle if at any time during the journey the vehicle is more than 25 miles from its operating centre (s. 52 (1)). It should be noted that the limitations imposed by this provision are more stringent than those laid down for the determination of "ordinary long distance carriage" (*vide supra*), and that while the carriage of goods for a total distance not exceeding 40 miles, even though the journey takes the vehicle outside the 25 mile limit, does not constitute ordinary long distance carriage, such carriage, if undertaken for hire or reward, is restricted under this provision. The carriage of special type goods, however, which is excluded from the definition of ordinary long distance carriage, is also excluded from this provision (s. 52 (1)). A person carrying on an existing undertaking in respect of which no notice of acquisition (other than a notice subsequently withdrawn) has been served is protected by the fact that he may, within a prescribed time after the appointed day, apply for the issue of "an original permit," and that until the application has been dealt with he will be entitled, in effect, to treat the application as granted (s. 53 (1), (2)). An original permit will normally last, in the first instance, for a year, and if not revoked thereafter, for three-year periods (s. 53 (5)). If some activity which has been regularly carried on by an undertaking is substantially interfered with as a result of the refusal or revocation of an original permit, the applicant may require the Commission to serve a notice of acquisition with respect to the undertaking, which notice may, if the applicant so requires, be limited to specified A and B licence vehicles and property and contracts directly relating to the operation of those vehicles (s. 54). Where a notice is so limited there will be payable, in lieu of compensation calculated separately in respect of cessation of business and severance as above mentioned, combined compensation calculated in accordance with s. 55.

The Commission will not need a carrier's licence under the Road and Rail Traffic Act, 1933 (26 Halsbury's Statutes 870 *et seq.*), in respect of any goods vehicle used by them (s. 59).

Part IV of the Act which deals, *inter alia*, with passenger road transport, provides for the making of area road transport schemes. With the exception of those undertakings (forming part of a railway or canal undertaking) which are transferred to the Commission under Part II of the Act, no passenger road transport undertaking will be affected by the Act unless and until a scheme covering its area of operation is made. Such an "area road transport scheme" is a scheme devised to promote, first, the co-ordination of passenger transport services serving the area, whether by road or rail, and secondly, the provision of passenger road transport services suitable to the needs of the area (s. 63 (1)). The Minister of Transport in moving the Second Reading of the Bill stated that it was the Government's intention that ultimately road passenger services should be brought completely into an integrated national transport service (481 H. of C. Official Report 1632).

The preparation of schemes is a function of the Commission, who must prepare a scheme where the Minister so directs, but no scheme will take effect until submitted to the Minister and embodied in an order made by him in accordance with Sched. VIII (s. 63 (1), (3)). The Commission are, as soon as may be, to review all the passenger road services in Great Britain with a view to determining the areas for which schemes are required (s. 63 (1)). Before a scheme is submitted to the Minister, every local authority (defined to mean a county council, county borough council or the Common Council of the City of London) in the area and every joint committee or other combined body all the members of which are, or are representative of, local authorities and which is providing passenger road transport services in the area, are to be consulted (s. 63 (2)). In order to allow different schemes to be made suitable to the requirements of different areas, the provisions of the Act as to the contents of schemes are drawn in wide, and, for the most part, permissive terms.

A scheme may contain provisions dealing with such matters as the body or bodies to provide services within the area, the transfer of undertakings to any such body and the incorporation, with or without modifications, of provisions of the Act relating to the issue of stock, the transfer of undertakings and other matters (s. 64 (1)). It is, however, laid down that where a scheme is to be administered by some body or bodies other than the Commission the scheme must provide that at least one member of any such body shall be a person with a minimum of six years' experience in local government in the area (s. 64 (3)). Further, a scheme which provides for the transfer of an undertaking must provide for compensating the transferor in accordance with the proviso to Sched. VIII, para. 1 (1), which compensation is, in the case of a local authority (as above defined) a county district council or any other of the bodies who (as mentioned above) are to be consulted before the submission of a scheme, to be identical, as near as may be, with the compensation provided under s. 25 in the case of transfers from local authorities under Part II of the Act. S. 25 provides, *inter alia*, that in cases where the authority have for the purposes of the transferred undertaking raised money by the issue of securities or have advanced money for those purposes out of funds held by them, the Commission are to take over, from the date of transfer, liability for the payment of amounts due in respect of the redemption of the loan or the repayment of the advance and the payment of interest thereon.

Where the provisions of a scheme appear to him satisfactory, the Minister is to embody the scheme in a draft order. Provision is made for notification that such a draft order has been made and for the making of objections thereto. Where objection is duly made and not withdrawn, a public local inquiry is to be held, and the Minister may, after considering the report of the person holding the inquiry, make an order either in the terms of the draft or subject to such amendments as he thinks fit (Sched. VIII, para. 3). Where an objection is not withdrawn before the order is made, the order will be subject to the special parliamentary procedure laid down by the Statutory Orders (Special Procedure) Act, 1945 (38 Halsbury's Statutes 439).

The Commission will not need a road service licence under s. 72 of the Road Traffic Act, 1930 (23 Halsbury's Statutes 661), with respect to any passenger road service provided by them, whether under a scheme or otherwise (s. 65 (1)).

Part V of the Act deals with the Transport Tribunal and with transport charges and facilities. The Transport Tribunal is the Railway Rates Tribunal established under the Railways Act, 1921 (14 Halsbury's Statutes 316), renamed and with enlarged jurisdiction. As from the appointed day the Transport Tribunal will also acquire, *inter alia*, the jurisdiction of the Appeal Tribunal constituted under the Road and Rail Traffic Act, 1933, s. 15 (26 Halsbury's Statutes 885), to hear appeals in connection with licences for goods vehicles, and the Appeal Tribunal will then cease to exist (s. 73).

Charges schemes, dealing with the charges to be made by the Commission for their services and, where necessary, with other terms and conditions on which those services are to be provided, are to be prepared in draft by the Commission and submitted to the Transport Tribunal (s. 76). Provision is made for the confirmation (s. 78), alteration (s. 79) and review (s. 80) of schemes by that Tribunal. Local authorities, as representing the travelling public in their areas, are empowered to object to draft schemes, apply for the alteration of schemes and make representations on the review of schemes (s. 81).

The next Part of the Act, Part VI, deals with finance. The Commission's power of temporary borrowing is limited to £25,000,000, and its power to borrow by the

issue of British transport stock, which may be issued both to raise money and to satisfy compensation claims, is limited to £250,000,000 (s. 88).

When issued in satisfaction of compensation, such stock is to be equal in value at the date of issue to the amount of the compensation, regard being had to the market value of government securities at that date (s. 89 (2)). While the point is not dealt with in the Act, the Chancellor of the Exchequer stated during the course of the debate on the Second Reading of the Bill that British transport stock, unlike the stock issued for compensation to colliery undertakings under the Coal Industry Nationalisation Act, 1946 (39 Halsbury's Statutes 251), would be freely negotiable (431 H. of C. Official Report 1812). The Commission are to establish a reserve fund, one of the purposes of which is to prevent frequent fluctuations in the Commission's charges (s. 92).

Part VII of the Act relates to conditions of employment, pensions and compensation to officers and servants, while Part VIII deals with the settlement of questions arising in connection with compulsory acquisitions. A Transport Arbitration Tribunal is to be established for this purpose consisting of members appointed, so far as England and Wales are concerned, by the Lord Chancellor (s. 105). This tribunal will be a court of record and its orders will be enforceable as if they were High Court orders (s. 106 (1)). The tribunal have power to refer proceedings for hearing and determination to a person or persons appointed by them for the purpose (s. 105 (5)), and may, and where so ordered by the Court of Appeal must, state any question of law in the form of a special case for determination by that Court (s. 106 (3)). Subject thereto, the tribunal have sole jurisdiction to determine any dispute to which the Commission (and, except so far as the contrary is expressly provided, the transferee body under any scheme or order providing for a transfer to a body other than the Commission) are party as to any question required under the Act to be determined by the tribunal (s. 109).

Except where the total compensation payable does not exceed £20,000, no compensation is to be paid under Part III of the Act unless the payment is either confirmed or ordered to be made by the arbitration tribunal (s. 108 (1)).

Finally, Part IX of the Act deals with miscellaneous and general matters. Among other things, it provides for the payment to any local authority (including a council of a county district) from whom an undertaking is transferred under, *inter alia*, any area road transport scheme, of an "appropriate sum" out of a fund of £2,500,000 set aside as compensation to cover severance and increase of overhead expenses. The appropriate sum will be such an amount as may be specified in relation to the undertaking by regulations, and will be payable in cash (s. 114).

Where an undertaking of any such local authority as above mentioned is transferred, whether by agreement or otherwise, to the Commission, the local authority are entitled to a right of pre-emption in respect of any land previously held for the purposes of that undertaking of which, within a period of ten years, the Commission wish to dispose (s. 115). In addition, Part IX of the Act provides (s. 117) for renaming the Traffic Commissioners and the licensing authorities for Part I of the Road and Rail Traffic Act, 1933 (26 Halsbury's Statutes 872), and contains sections dealing with orders and regulations (ss. 119, 120), penalties (s. 121) and inquiries (s. 122).

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*An Act to provide for the establishment of a British Transport Commission concerned with transport and certain other related matters, to specify their powers and duties, to provide for the transfer to them of undertakings, parts of undertakings, property, rights, obligations and liabilities, to amend the law relating to transport, inland waterways, harbours and port facilities, to make certain consequential provision as to income tax, to make provision as to pensions and gratuities in the case of certain persons who become officers of the Minister of Transport, and for purposes connected with the matters aforesaid. [1536]*

[6th August 1947.]

## PART I

## THE BRITISH TRANSPORT COMMISSION

**1. The Commission.**—(1) For the purposes of this Act, there shall be a public authority to be called the British Transport Commission (in this Act referred to as “the Commission”). [1537]

(2) The Commission shall consist of a chairman and not less than four nor more than eight other members, all of whom shall be appointed by the Minister from among persons appearing to him to be persons who have had wide experience and shown capacity in transport, industrial, commercial or financial matters, in administration, or in the organisation of workers, and of whom the Chairman and not less than four other members shall be required to render whole-time service to the Commission. [1538]

(3) Every member of the Commission shall hold and vacate his office in accordance with the terms of his appointment and shall, on ceasing to be a member, be eligible for re-appointment :

Provided that any member may at any time by notice in writing to the Minister resign his office. [1539]

(4) A person shall be disqualified for being appointed or being a member of the Commission so long as he is a member of the Commons House of Parliament. [1540]

(5) Before appointing a person to be a member of the Commission, the Minister shall satisfy himself that that person will have no such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member of the Commission and the Minister shall also satisfy himself from time to time with respect to every member of the Commission that he has no such interest ; and any person who is, or whom the Minister proposes to appoint to be, a member of the Commission shall, whenever requested by the Minister so to do, furnish to him such information as the Minister considers necessary for the performance by the Minister of his duties under this subsection. [1541]

(6) A member of the Commission who is in any way directly or indirectly interested in a contract made or proposed to be made by the Commission shall disclose the nature of his interest at a meeting of the Commission ; and the disclosure shall be recorded in the minutes of the Commission, and the

member shall not take any part in any deliberation or decision of the Commission with respect to that contract. [1542]

(7) The Commission—

(a) shall pay to the members thereof such salaries or fees, and such allowances, as the Minister may, with the approval of the Treasury, determine; and

(b) on the retirement or death of any of the members as to whom the Minister may, with the approval of the Treasury, determine that such provision should be made, shall pay to or in respect of them such pensions as he may so determine. [1543]

(8) The Minister shall, as soon as may be after the first appointment of any person as a member of the Commission, lay before each House of Parliament a statement of the salary or fees and of the allowances which the Commission are required to pay to that person under the last preceding subsection. [1544]

(9) The provisions of the First Schedule to this Act shall have effect with respect to the Commission. [1545]

*British Transport Commission.*—The Minister of Transport has appointed the following persons to be the first members of the British Transport Commission: Sir Cyril Hurcomb, G.C.B., K.B.E. (Chairman); the Rt. Hon. Lord Ashfield; Mr. J. Benstead, C.B.E.; Lord Rusholme; Sir William Wood, K.B.E.; and Capt. Sir Ian Bolton, Bart., O.B.E. (part-time member) (see 443 H. of C. Official Report 158).

At least one member of the Commission must also be a member of the Central Transport Consultative Committee (see s. 6 (4), proviso (1), *post*).

*Statement of salary, etc.*—Parliament will receive two types of statement of the salaries, etc., of members of the Commission. First, on the first appointment of a member a statement of his salary, fees and allowances is to be laid before each House of Parliament by the Minister (sub-s. (8), *supra*). Secondly, a statement of the salaries or fees and of the emoluments of each of the members during the year is to be included in the Commission's annual report, a copy of which is to be similarly laid (s. 4 (7), *post*). Note that sub-s. (8), *supra*, refers to allowances, while s. 4 (7), *post*, refers to emoluments. Emoluments is a wider term (see the definition of the word in s. 125 (1), *post*).

It may be noted that neither the Coal Industry Nationalisation Act, 1946 (39 Halsbury's Statutes 251) nor the Electricity Act, 1947 (see title ELECTRICITY SUPPLY, *ante*), imposes any obligation on the Ministers concerned with the National Coal Board and the British Electricity Authority respectively, to disclose to Parliament the salaries, etc. of members of those bodies.

*Definitions.*—For definitions of "emoluments," "the Minister" and "pension," see s. 125 (1), *post*.

**2. Powers of Commission.**—(1) Subject to the provisions of this Act, the Commission shall have power—

(a) to carry goods and passengers by rail, road and inland waterway, within Great Britain;

(b) to provide, within Great Britain, port facilities and facilities for traffic by inland waterway;

(c) to store goods within Great Britain, whether or not those goods have been or are to be carried by the Commission, so, however, that facilities for the storage of goods which have not been or are not to be carried by the Commission shall not be provided by the Commission except on premises where such facilities are provided for the storage of goods carried or to be carried by them;

(d) to consign goods on behalf of other persons from any place in Great Britain, or from any place to which the Commission have themselves carried the goods in question, to any other place, whether in Great Britain or elsewhere;

(e) in places within Great Britain where their passengers may require them, to provide both for their passengers and for other persons hotels, hostels, other living accommodation and places for refreshment; and

(f) to provide in Great Britain such other amenities and facilities for passengers and other persons making use of the services provided by them as it may appear to them requisite or expedient to provide:

Provided that the Commission shall not have power to carry passengers by road in a hackney carriage adapted to carry less than eight passengers and used in plying or standing for hire in a street. [1546]

(2) Subject to the provisions of this Act, the powers conferred by subsection (1) of this section include power—

- (a) to construct, manufacture, purchase, maintain and repair anything required for the purpose of any of the activities of the Commission specified in that subsection ;
- (b) to do anything for the purpose of advancing the skill of persons employed by the Commission or the efficiency of the equipment of the Commission or of the manner in which that equipment is operated, including the provision by the Commission, and the assistance of the provision by others, of facilities for training, education and research ;
- (c) to buy land, or take land on lease or under any form of tenancy ;
- (d) to provide houses, hostels and other like accommodation for persons employed by the Commission ;
- (e) to do all other things which in the opinion of the Commission are necessary to facilitate the proper carrying on of the business of the Commission ;
- (f) to acquire by agreement (whether absolutely or for any period) the whole or any part of any undertaking of any other person, being an undertaking, or a part of an undertaking, the activities whereof are wholly or mainly such activities as are specified in the said subsection (1) ;
- (g) to enter into and carry out agreements with any person for the carrying on by that person, whether as agent for the Commission or otherwise, of any of the activities specified in the said subsection (1), or for the provision by that person, whether as agent for the Commission or otherwise, of clearing house facilities in connection with the transport of goods ;
- (h) to enter into and carry out agreements with any person carrying on business as a carrier of passengers or goods outside Great Britain providing for the carriage of passengers or goods by or on behalf of the Commission and that other person under one contract or at a through charge or in the same vehicles or containers, whether belonging to the Commission or not ;
- (i) to lend money to, or give guarantees for the benefit of, any person carrying on or about to carry on any of the activities specified in the said subsection (1), to lend money to, or give guarantees for the benefit of, any body corporate which directly or indirectly controls another body corporate which is carrying on or about to carry on any such activities, and to acquire by agreement any securities of any body corporate which is carrying on or about to carry on or which directly or indirectly controls another body corporate which is carrying on or about to carry on any such activities ;
- (j) to make housing loans to persons employed by the Commission to assist them to acquire housing accommodation :

Provided that—

- (i) the Commission shall not by virtue of this subsection engage in the building of ships, except lighters, barges or like vessels of a gross tonnage not exceeding one hundred and seventy-five tons ;
- (ii) the Commission shall not, by virtue of this subsection, construct or manufacture anything required for the purposes of any such activities of the Commission as are specified in paragraphs (e) and (f) of subsection (1) of this section unless either the construc-

tion or manufacture is such as would normally be carried on by persons carrying on a business the principal objects of which were restricted to the activities in question or the construction or manufacture of similar things is carried on by the Commission in connection with any such activities as are specified in paragraphs (a), (b), (c) or (d) of the said subsection (1) ;

- (iii) the Commission shall not, by virtue of this subsection, construct, manufacture, or otherwise produce anything which is not required for use for the purposes of their undertaking. [1547]

(3) Where, whether by agreement or otherwise, the Commission acquire the whole or any part of any undertaking of any other person, they may, subject to the provisions of this Act, carry on any activities, whether mentioned in subsection (1) of this section or not, which were theretofore carried on for the purposes of that undertaking or part of an undertaking or were authorised by any statutory provision to be carried on for the purposes thereof :

Provided that, notwithstanding anything in this subsection or in any subsequent provision of this Act, or in any scheme, order or regulations made under any such provision, the Commission shall not construct, manufacture or otherwise produce anything which is not required either for use for the purposes of their undertaking or for the fulfilment of a contract made, before the acquisition by the Commission of the undertaking or part of an undertaking, by the person theretofore carrying it on. [1548]

(4) Notwithstanding anything in the two last preceding subsections or in any subsequent provision of this Act, or in any scheme, order or regulation made under any such provision, the Commission—

- (a) shall not manufacture in any one financial year of the Commission, otherwise than for purposes of experiment or research, chassis for road vehicles substantially in excess of the total of the number manufactured in a year, in the course of carrying on all undertakings or parts of undertakings acquired by the Commission before the end of the financial year in question, by the persons theretofore carrying them on, such total being arrived at by taking, in the case of each undertaking or part of an undertaking, the highest number manufactured in any one financial year of that undertaking out of the last three such years completed before the date of the acquisition of the undertaking or part of an undertaking by the Commission ;

- (b) shall not manufacture in any one financial year of the Commission, otherwise than for purposes of experiment or research, bodies for road vehicles in numbers exceeding—

(i) in the case of bodies for passenger vehicles, one fifth of the total number of such bodies estimated to be required to be manufactured for use for the purposes of the Commission's undertaking during that year, with the addition of the number of omnibus bodies authorised to be manufactured under section twenty-one of the London Passenger Transport Act, 1933 ; or

(ii) in the case of bodies for other vehicles, one quarter of the total number of such bodies estimated to be required as aforesaid ;

- (c) shall not manufacture, otherwise than for the purposes of experiment or research, major components which are not required either—

(i) for a chassis to be manufactured by the Commission ; or

(ii) as replacements in chassis which have been manufactured either by the Commission or by the person theretofore carrying on an undertaking or part of an undertaking acquired by the Commission ;

- (d) shall not purchase any road vehicle for the purpose of sale to another person ;
- (e) shall not trade in spare parts for or accessories to road vehicles, or in petrol or oil for road vehicles, except by way of carrying on any activities mentioned in the last preceding subsection which consist of such trading, and shall cease to carry on any such activities not later than on the expiration of three years from the date of the acquisition by the Commission of the undertaking or part of an undertaking concerned ; and
- (f) shall not engage in the maintenance or repair of road vehicles or spare parts for or accessories to road vehicles (other than vehicles, spare parts or accessories used by the Commission for the purposes of their undertaking), except by way of carrying on any activities mentioned in the last preceding subsection which consist of such maintenance or repair, and shall cease to carry on any such activities not later than on the expiration of three years from the date of the acquisition by the Commission of the undertaking or part of an undertaking concerned :

Provided that, where any rights or liabilities under a contract made, before the date of the acquisition by the Commission of an undertaking or part of an undertaking, by the person theretofore carrying it on become, by virtue of the acquisition, rights or liabilities of the Commission—

- (i) any chassis or body for a road vehicle manufactured by the Commission in pursuance of the contract shall be left out of account for the purposes of paragraph (a) or paragraph (b) of this subsection ; and
- (ii) nothing in paragraphs (c), (d), (e) or (f) of this subsection shall have effect so as to prevent the fulfilment of that contract by the Commission. [1549]

(5) For the purposes of the last preceding subsection—

“ body,” in relation to a vehicle in which the framework to which the major components are attached forms an integral whole with the body-structure, includes that framework ;

“ chassis ” means—

(a) in relation to a vehicle in which the framework to which the major components are attached is distinct from the body-structure, that framework together with the complement of major components required in order to construct a road vehicle on that framework ; or

(b) in relation to a vehicle in which the framework to which the major components are attached forms an integral whole with the body-structure, the complement of major components required in order to complete that body-structure, when new, as a road vehicle ;

“ major component ” means the complete power unit, complete transmission system, complete suspension system, complete steering gear, complete braking system or complete axle of a vehicle ;

“ manufacture,” in relation to the body of a road vehicle and in relation to the chassis of a road vehicle where the framework to which the major components are attached is distinct from the body-structure, includes the assembly of the parts of the body or, as the case may be, of the parts of the chassis, for the purpose of constructing a new body or, as the case may be, a new chassis. [1550]

(6) For the purposes of subsection (4) and of the provisos to subsections (2) and (3) of this section, where a body corporate is directly or indirectly controlled by the Commission, anything done by that body shall be deemed to be



done by the Commission and the undertaking of the body shall be deemed to form part of the undertaking of the Commission. [1551]

(7) The Commission may dispose, whether absolutely or for a term of years, of any part of their undertaking or any property which in their opinion is not required by them for the discharge of their duties under this Act, including, without prejudice to the generality of the preceding words, any part of their undertaking which is carried on outside Great Britain and any property situated outside Great Britain. [1552]

(8) For the avoidance of doubt, it is hereby declared that the preceding provisions of this section relate only to the capacity of the Commission as a statutory corporation, and nothing in the said provisions shall be construed as authorising the disregard by the Commission of any enactment or rule of law. [1553]

(9) The provisions of this section (except where they expressly refer to any subsequent provision of this Act) shall not be construed as limiting any power of the Commission conferred by or under any subsequent provision of this Act. [1554]

*General note.*—This section deals with the powers of the British Transport Commission. Sub-s. (1) sets out the principal powers conferred on the Commission, which by sub-s. (2) are deemed to include the ancillary powers set out in that subsection. The powers so conferred are subject to certain specific limitations which, *inter alia*, preclude the Commission from (a) providing premises intended exclusively for the storage of goods not carried by the Commission; (b) running hackney carriages; (c) building ships, other than certain small vessels; and (d) manufacturing anything not required for use by the Commission.

Sub-s. (3) extends the Commission's powers so as to include the carrying on of any activity previously carried on or authorised to be carried on by an undertaking acquired by the Commission, subject to the proviso that the Commission may not, notwithstanding anything in sub-s. (3) or in any subsequent provision of the Act, except in fulfilment of a contract made by a transferred undertaking, manufacture anything not required for the use of the Commission.

Sub-s. (4), notwithstanding anything in sub-ss. (2) and (3), prohibits the Commission from (i) manufacturing, except for purposes of experiment or research, more than a certain number of chassis, bodies and component parts for road vehicles; (ii) purchasing a road vehicle for the purpose of sale; (iii) trading in spare parts, petrol, etc. for road vehicles; and (iv) engaging in maintenance or repair work for road vehicles (other than vehicles of the Commission). It is, however, provided by sub-s. (4) that any chassis or body for a road vehicle which is manufactured by the Commission in pursuance of a contract made by a transferred undertaking is to be left out of account for the purposes of (i), and further that the Commission may, by way of carrying on the activities of a transferred undertaking, engage in the activities mentioned in (iii) and (iv) for a period not exceeding three years.

The definition of terms is dealt with in sub-s. (5) and sub-s. (6) provides that for certain purposes anything done by a body corporate which is directly or indirectly controlled by the Commission shall be deemed to be done by the Commission and the undertakings of that body shall be deemed to form part of the undertakings.

By sub-s. (7) the Commission are given power to dispose of any property not required for the discharge of their duties, power which they must exercise if the Minister so directs (see s. 4 (5), *post*).

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Charges for services under sub-s. (1), paras. (a) to (c).*—Before August 6, 1949, or such later date as the Minister may allow, the Commission are to prepare and submit to the Minister a draft charges scheme or schemes relating to all the services and facilities provided by them under sub-s. (1), paras. (a) to (c), *ante*, and to such other of the services and facilities provided by them as they are of opinion should be dealt with by charges schemes (s. 76, *post*). As to charges schemes generally, see ss. 76–81, *post*.

*Within Great Britain.*—It will be noted that while para. (a) of sub-s. (1), *ante*, empowers the Commission to carry goods *within Great Britain*, para. (d) of that subsection empowers them to consign goods not only from any place in Great Britain but also from any other place to which the Commission have themselves carried those goods.

This apparent contradiction in the powers conferred on the Commission under sub-s. (1), *ante*, is resolved by sub-s. (3), *ante*, which in effect extends those powers, subject to certain limitations, to cover the doing of anything which an acquired undertaking previously did or was authorised to do.

S. 12 of the Act, which provides for the transfer of railway undertakings to the Commission, expressly declares that the transfer effected by that section extends to parts of undertakings which are carried on outside Great Britain or are concerned with activities other than those specified in sub-s. (1), *ante*, and the Commission accordingly have the same power to carry goods (and passengers) to any place outside Great Britain as the railway undertakings had. It may be noted that the power of disposal conferred on the Commission by sub-s. (7), *supra*, expressly includes a power to dispose of any part of their undertaking or property outside Great Britain.

*Hackney carriage.*—This term is not defined in this Act. There is a definition in the Customs and Inland Revenue Act, 1888, s. 4 (3) (16 Halsbury's Statutes 577), but in the context here it seems that the definition to be applied is that in the Town Police Clauses Act, 1847, s. 38 (19 Halsbury's Statutes 44), as incorporated by the Public Health Act, 1875, s. 171 (13 Halsbury's Statutes 696). The notes in Lumley's Public Health, pp. 4237, 4238, should be consulted.

*In the opinion of the Commission.*—These words in sub-s. (2) (e), *ante*, appear to have the effect of excluding from the jurisdiction of the Courts the determination of any question arising as to whether anything done by the Commission is necessary to facilitate the proper carrying on of the business of the Commission, provided the Commission do not do anything which they are expressly prohibited from doing. See *R. v. Comptroller General of Patents, Ex parte Bayer Products, Ltd.*, [1941] 2 K. B. 306; [1941] 2 All E. R. 877, *per Scott, L.J.*, at p. 681; and *Liversidge v. Anderson*, [1942] A. C. 206; [1941] 3 All E. R. 338, *per Lord ATKIN* at pp. 353, 354, in which cases words of a similar nature are considered.

The Attorney-General, opposing an Amendment moved in Committee to omit these words, drew a distinction between ordinary limited companies, over which he said it was essential that the courts should have stringent powers of control, and statutory corporations which were operating in the public service and were under the general supervision of Ministers who were themselves directly responsible to Parliament. The Attorney-General said:—

“In the view of the Government it is more appropriate that the legislature should decide in a particular case whether a particular matter will ‘facilitate the proper carrying on of the business of the Commission’ than that a court should do so” (H. of C. Official Report, S.C.B., February 18, 1947, col. 238).

*Power to acquire by agreement.*—As to the acquisition by the Commission of undertakings by agreement, see sub-s. (2) (f), *ante*, and s. 7, *post*. The consent of the Minister is required in certain cases (see s. 4 (4), *post*). As to the provision to be made for the compensation of officers and servants when an undertaking is acquired by agreement, see s. 102, *post*.

*Control by a body corporate of another body corporate.*—Whether or not any body corporate directly or indirectly controls another body corporate is to be determined in accordance with Sched. XIII, *post* (see s. 125 (4), *post*).

*Orders and regulations.*—See s. 120, *post*.

*London Passenger Transport Act, 1933, s. 21.*—26 Halsbury's Statutes 772. This section restricts the number of omnibus bodies which the London Passenger Transport Board may manufacture in any year for use in connection with their undertaking (otherwise than for purposes of experiment or research) to a number not exceeding the average number of omnibus bodies manufactured annually by the London General Omnibus Company Limited at its Chiswick premises during the five years 1927–1931. By s. 128 (2) (b) and Sched. XV, *post*, the section is amended as from January 1, 1948, the day on which the Board's undertaking is transferred to the Commission.

*Road.*—S. 125 (2), *post*, provides that, except in so far as the context otherwise requires, expressions used in any provision of the Act in relation to the carriage of passengers by road have the same meanings as in the Road Traffic Act, 1930. Accordingly, the meaning of the expression “road” as defined in s. 121 of that Act (23 Halsbury's Statutes 686) would appear to be the meaning of that expression in relation to the carriage of passengers by road for the purposes of the present section:—

“‘Road’ means any highway and any other road to which the public has access, and includes bridges over which a road passes.”

*Sub-s. (8).*—This subsection is in similar terms to s. 49 (4) of the Coal Industry Nationalisation Act, 1946 (39 Halsbury's Statutes 294), and s. 2 (4) of the New Towns Act, 1946 (39 Halsbury's Statutes 665).

*Sub-s. (9).*—For the references in this section to “any subsequent provision of this Act,” see the proviso to sub-s. (3) and the second line of sub-s. (4).

*Definitions.*—For definitions of “inland waterway,” “port facilities,” “property,” “securities,” “ship” and “statutory provisions,” see s. 125 (1), *post*.

**3. General duty of the Commission.**—(1) It shall be the general duty of the Commission so to exercise their powers under this Act as to provide, or secure or promote the provision of, an efficient, adequate, economical and properly integrated system of public inland transport and port facilities within Great Britain for passengers and goods with due regard to safety of operation; and for that purpose it shall be the duty of the Commission to take such steps as they consider necessary for extending and improving the transport and port facilities within Great Britain in such manner as to provide most efficiently and conveniently for the needs of the public, agriculture, commerce and industry:

Provided that the references in this subsection to transport do not include references to transport by air. [1555]

(2) Where the Commission are for the time being providing regular goods transport services of different kinds available between the same points, it shall be their duty to allow any person desiring transport for his goods between those points freedom to choose such of the services so provided as he considers most suitable to his needs:

Provided that nothing in this subsection shall be construed as—

(a) imposing on the Commission any obligation as to the provision or continued provision (either at all or to any particular extent) of any, or of any particular form of, goods transport service between any particular points; or

(b) preventing the Commission from making charges which differ according to the requirements made as respects the kinds of goods transport services which are to be used. [1556]

(3) Where the Commission intend to discontinue permanently the provision of any regular goods transport service by road between any particular points, they shall, before discontinuing that service, give not less than one month's notice of their intention, in such manner as appears to them best suited for bringing that intention to the notice of the persons who, in the opinion of the Commission, are likely to be directly affected by the discontinuance. [1557]

(4) All the business carried on by the Commission, whether or not arising from undertakings or parts of undertakings vested in them by or under any provision of this Act, shall form one undertaking, and the Commission shall so conduct that undertaking and, subject to the provisions of this Act, levy such fares, rates, tolls, dues and other charges, as to secure that the revenue of the Commission is not less than sufficient for making provision for the meeting of charges properly chargeable to revenue, taking one year with another. [1558]

(5) Nothing in this section shall be construed as imposing on the Commission, either directly or indirectly, any form of duty or liability enforceable by proceedings before any court or tribunal to which they would not otherwise be subject. [1559]

*General note.*—In addition or by way of complement to the general duties imposed by this section, the Commission have important duties in connection with the preparation of road transport schemes (see s. 63 (1), *post*), schemes as to harbours (s. 66 (2); see title *HARBOURS, DOCKS AND WHARVES, ante*) and charges schemes (see s. 76, *post*). It is also the duty of the Commission to give effect to directions of a general character given to them by the Minister (see s. 4, *infra*).

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Duty of Commission.*—It may be noted that although the general duty imposed on the Commission by this section is limited to the provision of services and facilities within Great Britain, the powers of the Commission, by virtue of s. 2 (3), *ante* (see note to that section: "Within Great Britain"), extend to activities outside Great Britain.

*Transport by air.*—The provision of air transport services is governed by the Civil Aviation Act, 1946 (39 Halsbury's Statutes 791).

*Differential charges.*—Charges schemes are to be made for determining the Commission's charges (s. 76, *post*), which may contain provisions authorising or enabling authorisation to be given to the making of differential charges (s. 77 (1) (d), (e), *post*).

*Charges properly chargeable to revenue.*—As to the construction of this expression, see s. 93, *post*. Neither the Commission nor the Transport Tribunal are to do anything in the exercise of their powers as respects charges and charges schemes which in their opinion will prevent the Commission discharging their general duty as to revenue in accordance with sub-s. (4), *supra* (see s. 85, *post*).

*Taking one year with another.*—This phrase occurs in a similar context in s. 36 (1) of the Electricity Act, 1947 (see title *ELECTRICITY SUPPLY, ante*). Compare the phrase "on an average of good and bad years" which occurs in s. 1 (4) (c) of the Coal Industry Nationalisation Act, 1946 (39 Halsbury's Statutes 257).

*Definitions.*—For definitions of "charges," "liability" and "port facilities," see s. 125 (1), *post*.

**4. Powers of the Minister in relation to the Commission.**—(1) The Minister may, after consultation with the Commission, give to the Commission directions of a general character as to the exercise and performance by the Commission of their functions in relation to matters which appear to him to affect the national interest, and the Commission shall give effect to any such directions. [1560]

(2) In framing programmes of reorganisation or development involving substantial outlay on capital account, the Commission shall act on lines settled from time to time with the approval of the Minister. [1561]

(3) In the exercise and performance of their functions as to training, education and research, the Commission shall act on lines settled as aforesaid. [1562]

(4) The Commission shall not, without the consent of the Minister, acquire by agreement (whether absolutely or for any period) the whole or any part of any undertaking if the activities of that undertaking or that part thereof, as the case may be, consist wholly or mainly in constructing, owning, operating

or conserving any railway, harbour or inland waterway, or in operating tram-cars or trolley vehicles. [1563]

(5) Without prejudice to the preceding provisions of this section, the Minister may, after consultation with the Commission, direct the Commission to discontinue any of their activities, dispose of any part of their undertaking, dispose of any securities held by them, call in any loan made by them or exercise any power they may possess to revoke any guarantee given by them, and the Commission shall give effect to any such directions :

Provided that the Minister shall not give any such direction unless he is satisfied that the carrying on of the activities or the retention of the part of the undertaking or the securities or the continuance of the loan or guarantee, as the case may be, is unnecessary for the proper discharge of the duties of the Commission under this Act. [1564]

(6) The Commission shall furnish the Minister with such returns, accounts and other information with respect to their property and activities as he may from time to time require. [1565]

(7) Without prejudice to the provisions of the last preceding subsection, the Commission shall, as soon as possible after the end of each financial year of the Commission, make to the Minister a report on the exercise and performance by them of their functions during that year and on their policy and programme, and the Minister shall lay a copy of every such report before each House of Parliament.

The report of any year shall set out any direction given by the Minister to the Commission during that year unless the Minister has notified to the Commission his opinion that it is against the interests of national security to do so and shall include a statement of the salaries or fees and of the emoluments of each of the members of the Commission during that year. [1566]

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Powers of the Minister.*—The provisions of this section are similar to those made by other Acts constituting nationally-owned bodies. The following comparisons may be made :—

Sub-ss. (1) to (3).—These subsections are in identical terms with s. 3 (1) to (3) of the Coal Industry Nationalisation Act, 1946 (39 Halsbury's Statutes 258), and very similar to s. 5 (1) to (3) of the Electricity Act, 1947 (see title *ELECTRICITY SUPPLY, ante*). Sub-s. (1), *ante*, is in identical terms with s. 4 of the Civil Aviation Act, 1946 (39 Halsbury's Statutes 797).

Sub-s. (5).—This subsection is similar to s. 5 (4) of the Electricity Act, 1947 (see title *ELECTRICITY SUPPLY, ante*). Compare s. 2 (5) of the Civil Aviation Act, 1946 (39 Halsbury's Statutes 796).

Sub-s. (6).—This subsection is similar to s. 3 (4) of the Coal Industry Nationalisation Act, 1946 (39 Halsbury's Statutes 258) and to s. 5 (5) of the Electricity Act, 1947 (see title *ELECTRICITY SUPPLY, ante*). Compare also s. 22 (6) of the Civil Aviation Act, 1946 (39 Halsbury's Statutes 808).

Sub-s. (7).—This subsection is similar to s. 54 of the Coal Industry Nationalisation Act, 1946 (39 Halsbury's Statutes 296), to s. 22 (1), (2), (3) of the Civil Aviation Act, 1946 (39 Halsbury's Statutes 807), and to s. 8 (1), (5) of the Electricity Act, 1947 (see title *ELECTRICITY SUPPLY, ante*), except that those sections do not require the annual reports of the National Coal Board, the British Airways Corporations and the British Electricity Authority respectively, to include a statement of the salaries, etc., of the members of those bodies.

*Acquisition by agreement.*—As to acquisition by the Commission of undertakings by agreement, see s. 2 (2) (f), *ante*, and s. 7, *post*. The Minister may not approve any agreement which requires his approval unless appropriate provision for the compensation of officers and servants is made in accordance with s. 102 (1), *post*.

*Tramcars ; trolley vehicles.*—S. 125 (2), *post*, provides that, except in so far as the context otherwise requires, expressions used in any provision of this Act in relation to the carriage of passengers by road have the same meanings as in the Road Traffic Act, 1930. S. 121 of that Act (23 Halsbury's Statutes 686) defines "tramcar" and "trolley vehicle" as follows :—

" 'Tramcar' includes any carriage used on any road by virtue of an order made under the Light Railways Act, 1896 " (14 Halsbury's Statutes 252).

" 'Trolley vehicle' means a mechanically-propelled vehicle adapted for use upon roads without rails and moved by power transmitted thereto from some external source."

*Report of Commission.*—The Commission's annual report is to include a copy of the annual statement of accounts and of any auditors' report thereon (see s. 94 (4), *post*).

*Statement of salaries, etc.*—A statement of the salaries, fees and allowances of a member of the Commission on his first appointment is to be laid before Parliament (see s. 1 (8), *ante*, and note thereto).

*Directions.*—In addition to the general power conferred by this section, the Minister is empowered to give directions to the Commission on a number of specific matters ; see ss. 6 (8),

63 (4), 66 (9), 71 (4), 92 (2) (b), 94 (3), (7), 102 (2), *post*. Neither the Commission nor the Transport Tribunal in the exercise of their powers as respects charges and charges schemes are to do anything which will prevent the Commission from giving effect to any direction (see s. 85, *post*).

*Definitions*.—For definitions of “*emoluments*,” “*harbour*,” “*inland waterway*,” “*the Minister*” and “*securities*,” see s. 125 (1), *post*.

**5. The Executives.**—(1) There shall be public authorities known as Executives to assist the Commission in the discharge of their functions in the manner specified in this section. [1567]

(2) The provisions of the Second Schedule to this Act shall have effect with respect to the membership of the Executives and otherwise in relation to them. [1568]

(3) The number and names of the Executives shall be such as may from time to time be provided by order of the Minister after consultation with the Commission, but unless and until other provision is made by such an order there shall be Executives known respectively as the Railway Executive, the Docks and Inland Waterways Executive, the Road Transport Executive and the London Transport Executive and, as from the appointed day, an Executive known as the Hotels Executive. [1569]

(4) Each Executive shall, as agents for the Commission, exercise such functions of the Commission as are for the time being delegated to them by or under a scheme made by the Commission and approved by the Minister. [1570]

(5) Every scheme made and approved as aforesaid and every instrument issued thereunder effecting or revoking or varying any delegation of functions of the Commission shall be published in the London, Edinburgh and Belfast Gazettes :

Provided that the publication in the London, Edinburgh or Belfast Gazette of a notice stating that a scheme has been made and approved or that an instrument has been issued, and specifying the place where copies thereof may be purchased, shall be sufficient compliance with the provisions of this subsection as respects the publication of that scheme or instrument in that Gazette. [1571]

(6) Any delegation effected by or under such a scheme may be expressed by the scheme or by the relevant instrument issued thereunder to be subject to conditions and limitations, and, whether or not the relevant delegation is expressed to be subject to any conditions or limitations, every Executive shall, in the exercise of their functions, give effect to any directions which may from time to time be given to them by the Commission. [1572]

(7) Any such delegation may be so framed as to empower the Executive to perform any of the functions delegated to them through agents. [1573]

(8) No such delegation shall be so framed as to empower the Executive to borrow any money unless the borrowing is temporary, is for the purpose of carrying on the current business of the Executive and is authorised, either generally or specially, by the Commission. [1574]

(9) As respects matters for the time being falling within the scope of any such delegation, the following provisions shall have effect except as between the Executive and the Commission, that is to say—

(a) any rights, powers and liabilities of the Commission shall be treated as rights, powers and liabilities of the Executive, and the Executive only ;

(b) the Executive shall, to the exclusion of the Commission, be treated as the employer of any officers or servants of the Commission so long as they are by virtue of the delegation under the control of the Executive ;

and references to the Commission in this Act or in any other statutory provision or in any contract or document shall be construed accordingly, and legal

proceedings shall be brought by and against the Executive accordingly, to the exclusion of the Commission :

Provided that if any sum required by any judgment or order to be paid by an Executive is not paid by the Executive within fourteen days from the date on which execution becomes leviable to enforce the judgment or order, the Commission shall be liable to pay that sum and that judgment or order shall be enforceable against the Commission accordingly. [1575]

(10) In addition to the powers exercisable by an Executive by virtue of any such delegation, every Executive shall, except so far as the Commission may otherwise direct, have power, at the request of the Commission or of any other Executive, to do, as agent for the Commission or that other Executive, anything which the Commission or that other Executive have power to do. [1576]

(11) Where the effect of an order of the Minister under subsection (3) of this section is to abolish an Executive, or the effect of a scheme under subsection (4) of this section is that functions previously directly exercisable by the Commission are exercisable by an Executive or that functions previously exercisable by an Executive are exercisable by a different Executive or directly by the Commission, the order or scheme shall include such transitional provisions as to the parties by and against whom legal proceedings are to be instituted or continued, and such other transitional provisions, if any, as appear to the Minister, or to the Commission and the Minister, as the case may be, to be expedient. [1577]

*General effect of section.*—See Preliminary Note, *ante*.

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Road Passenger Executive.*—Opposing an Amendment moved on the Committee Stage designed to provide that the original Executives constituted under sub-s. (3), *ante*, should include, in place of a single Road Transport Executive covering both passenger and goods transport, two Executives, one of each of these classes, the Parliamentary Secretary to the Ministry of Transport said :—

“ We felt it desirable that there should be at the outset only a small number of Executives, that it would be a mistake to set up a larger number than appeared absolutely necessary ; and it must be appreciated that, while the Road Executive dealing with freight will have a great deal of work to do from the word ‘ go ’ there will be no operational work which the Road Passenger Executive can do until the schemes which the Commission have drawn up have been considered by the Minister and put into effect, may be after [special] Parliamentary procedure. We do not consider it wise to establish immediately a Road Passenger Executive which would have no operational work. . . . The honorary members can be assured that the moment it appears that the time is ripe to bring into effect a Road Passenger Executive, that will be done ” (H. of C. Official Report, S.C.B., February 26, 1947, col. 452).

*Appointed day.*—For the purposes of sub-s. (3), *ante*, this is April 1, 1948 (Hotels Executive (Appointed Day) Order, 1948; S.I. 1948 No. 474).

*Definitions.*—For definitions of “ borrow,” “ liability,” “ officer ” and “ the Minister,” see s. 125 (1), *post*.

**6. Consultative Committees.**—(1) There shall be established in accordance with the provisions of this section a Central Transport Consultative Committee for Great Britain and, for such areas in Great Britain as are mentioned in subsection (3) of this section, either—

- (a) a Transport Users Consultative Committee in respect of passenger traffic and a Transport Users Consultative Committee in respect of goods traffic ; or
- (b) a Transport Users Consultative Committee in respect of both passenger and goods traffic. [1578]

(2) The Minister may at any time, after consultation with the Central Transport Consultative Committee, abolish any Transport Users Consultative Committee. [1579]

(3) The areas for which there are to be Transport Users Consultative Committees shall be such areas in Great Britain as the Minister may from time to time direct :



Provided that—

- (a) there shall be no part of Great Britain which is not within the area of a Transport Users Consultative Committee ; and
- (b) whether or not there are a Transport Users Consultative Committee or Transport Users Consultative Committees for areas consisting of or including parts of Scotland and parts of Wales, there shall at all times be a Transport Users Consultative Committee in respect of both passenger and goods traffic for Scotland and a Transport Users Consultative Committee in respect of both passenger and goods traffic for Wales,

and the powers of the Minister under this and the last preceding subsection shall be exercised accordingly. [1580]

(4) Every such Committee as aforesaid shall consist of such number of persons appointed by the Minister as the Minister may from time to time determine, being—

- (a) an independent chairman ;
- (b) members appointed, after consultation with such bodies representative of the interests concerned as the Minister thinks fit, to represent agriculture, commerce, industry, shipping, labour and local authorities ; and
- (c) members appointed from among persons nominated by the Commission :

Provided that—

- (i) in the case of the Central Transport Consultative Committee, the persons nominated by the Commission shall include at least one member of the Commission ;
- (ii) members need not be appointed under paragraph (b) of this subsection to any Transport Users Consultative Committee to represent any of the interests mentioned in paragraph (b) of this subsection which in the opinion of the Minister need not be represented on that Committee ; and
- (iii) the Minister may, if he thinks fit, appoint to any such committee not more than two additional members. [1581]

(5) A person who is appointed a member of a Committee established under this section shall not by reason of his appointment be disqualified for being elected to, or for sitting or voting as a member of, the Commons House of Parliament. [1582]

(6) The members of any Committee established under this section shall hold and vacate their office in accordance with the terms of their respective appointments and shall, on ceasing to be members of the Committee, be eligible for re-appointment :

Provided that any member may at any time by notice in writing to the Minister resign his office. [1583]

(7) Every Committee appointed under this section shall consider and, where it appears to the Committee to be necessary, make recommendations in regard to any matter (including charges) affecting the services and facilities provided by the Commission which has been the subject of representations (other than representations which appear to the Committee to be frivolous) made to the Committee by users of those services or facilities, or which appears to be a matter to which consideration ought to be given, or which the Minister or Commission may refer to them for consideration ; and every such Committee shall meet when convened by the chairman thereof, but in no case less frequently than twice a year, and, without prejudice to the discretion of the Chairman to call a meeting of the Committee whenever he thinks fit so to do,



he shall call a meeting thereof when required so to do by any three members of the Committee. [1584]

(8) Minutes shall be kept of the proceedings of every such Committee and copies of the minutes and of the recommendations or conclusions of any such Committee shall—

- (a) in the case of a Transport Users Consultative Committee, be sent to the Central Transport Consultative Committee and to the Commission ;
- (b) in the case of the Central Transport Consultative Committee, be sent to the Minister and to the Commission,

and where a copy of a recommendation of the Central Transport Consultative Committee is sent to the Minister, the Minister may give such directions to the Commission with respect to the matters dealt with by the recommendation as he thinks fit, and the Commission shall give effect to any such directions. [1585]

(9) The Central Transport Consultative Committee shall make an annual report to the Minister, and the Minister shall lay a copy of that report before each House of Parliament. [1586]

(10) The Commission shall provide every such Committee with such officers and servants, and such office accommodation, as appear to the Commission to be requisite for the proper discharge of the Committee's functions or as may be directed by the Minister ; and they may pay to the members of any such Committee allowances in respect of any loss of remunerative time in accordance with a scale approved by the Minister and the Treasury and such travelling allowances and such allowances in respect of their out-of-pocket expenses as the Commission may determine. [1587]

(11) The panels set up under section twenty-three of the Ministry of Transport Act, 1919, and the Transport Advisory Council set up under section forty-six of the Road and Rail Traffic Act, 1933, shall cease to exist. [1588]

*General note.*—This section provides for the establishment of a Central Transport Consultative Committee for the whole of Great Britain, and for every area therein either a joint Transport Users Consultative Committee in respect of both passenger traffic and goods traffic or two separate Committees in respect of each of these classes of traffic.

The areas of the Transport Users Consultative Committees will be such areas as the Minister may direct, but every part of Great Britain is to be within the area of a Committee. The members of the Committees (including the Central Committee) will be appointed by the Minister and in the case of a Transport Users Consultative Committee will, unless in any particular case the Minister considers such representation unnecessary, include members appointed to represent local authorities.

Recommendations of any Transport Users Consultative Committee are to be sent to the Central Committee, and recommendations of that Committee are to be sent both to the Commission and the Minister who may give the Commission such directions with respect thereto as he thinks fit.

*Sub-s. (2).*—The power of abolition conferred by this subsection is principally for the purpose of facilitating the reconstitution of a Transport Users Consultative Committee (see the proviso to sub-s. (3), *ante*).

*Independent chairman.*—In replying to a question, during the Committee Stage in the House of Lords as to the definition, for the purposes of sub-s. (4) (a), *ante*, of the term "independent" having regard to the fact that almost everyone is connected with one or other of the interests specified in sub-s. (4) (b), *ante*, the Government spokesman said :—

" It would be the Minister's endeavour to select as Chairmen persons of high standing in the localities who were not too definitely connected with one of the user interests specified in the paragraph. . . . The noble Lord raises the point : then who is left ? The answer is that this still leaves the field of professional occupations upon which to draw, and the Minister would no doubt feel free to appoint any person whose background was, for example, commerce or industry, but who might not be an active member of the local Chamber of Commerce or the Manufacturers' Association " (148 H. of L. Official Report 660).

*Local authority.*—This means the council of a county, the Common Council of the City of London or the council of a county borough (see s. 125 (1), *post*, and note thereto).

An amendment was moved to sub-s. (4), *ante*, during the Committee Stage in the House of Lords which, by seeking to exclude proviso (ii) to sub-s. (4), *ante*, from applying to members representing local authorities, would have required the Minister to appoint such members to all Transport Users Consultative Committees. In opposing this Amendment, the Government spokesman said that local authorities were clearly the proper custodians of the interests of the travelling public and as such ought to be represented on a Transport Users Consultative Committee dealing with passenger traffic, but if separate Committees were set up in respect of

goods traffic it might be more appropriate to confine its members to persons selected from the other interests specified in sub-s. (4) (b) (148 H. of L. Official Report 671).

*Directions.*—Powers of giving directions to the Commission, in addition to those conferred by sub-s. (8), *ante*, are conferred on the Minister by s. 4, *ante*, and ss. 63 (4), 66 (9), 71 (4), 92 (2) (b), 94 (3), (7), 102 (2), *post*. See also s. 85, *post*.

*Ministry of Transport Act, 1919, s. 23.*—3 Halsbury's Statutes 438. This section, as slightly amended by the Ministers of the Crown (Transfer of Functions) Act, 1946, s. 6 and Sched. II (39 Halsbury's Statutes 85, 87), directed the Minister of Transport to set up panels of experts and of impartial persons to advise and assist him in connection with his powers and duties under the Act of 1919.

The section is repealed, as from the passing of the present Act, by s. 128 and Sched. XV, Part I, *post*.

*Road and Rail Traffic Act, 1933, s. 46.*—26 Halsbury's Statutes 910. This section provided for the constitution of the Transport Advisory Council to advise the Minister of Transport in connection with his functions in relation to means of and facilities for transport and their co-ordination, improvement and development. The section permitted the inclusion on a committee of the Council of members of the panel set up under the Ministry of Transport Act, 1919, s. 23, *supra*.

The said s. 46 is repealed, as from the passing of the Act, by s. 128 and Sched. XV, Part I, *post*.

*Definitions.*—For definitions of "charges," "officers" and "the Minister," see s. 125 (1), *post*.

**7.—Acquisition by Commission of undertakings by agreement.**—(1) Where the Commission have power under the preceding provisions of this Part of this Act to acquire an undertaking or part of an undertaking by agreement, the persons theretofore carrying on that undertaking may, notwithstanding anything to the contrary in any statutory provision or other instrument relating to their functions, make and carry out agreements with the Commission for the transfer to the Commission of the whole or any part of that undertaking. [1589]

(2) Where any such agreement is made, the Minister may make regulations for enabling the undertaking or part of an undertaking to be carried on by the Commission in lieu of the persons theretofore carrying it on, and any such regulations—

- (a) may include provisions for transferring rights, powers, and liabilities to the Commission, and, where the said persons are a body corporate, for winding them up ;
- (b) may, to such extent as may be necessary for the purpose of enabling the undertaking or part of an undertaking to be carried on by the Commission in lieu of the said persons or for the purpose of enabling the said persons to be wound up, adapt, modify or repeal any statutory provision ;
- (c) may, to such extent as may be necessary for the purpose of enabling the undertaking or part of an undertaking to be carried on by the Commission in lieu of the said persons, adapt or modify any contract or other instrument of or relating to the said persons or relating to the undertaking ; and
- (d) may make such transitional provision in connection with the transfer of the undertaking or part of an undertaking as the Minister may think necessary or expedient. [1590]

(3) Notwithstanding anything in subsection (2) of this section, where any statutory provision relating to the undertaking or the person theretofore carrying it on is expressed to be for the protection or for the benefit of a named person, the Minister shall not by any regulations made under the said subsection (2) repeal that statutory provision or so adapt or modify it as to lessen the protection or benefit afforded thereby unless the named person is a party to the agreement or consents to the making of the regulations, but the Minister may by order made without such consent do anything which he could do by regulations with such consent, and any such order shall be subject to special parliamentary procedure. [1591]

*The Commission.*—The British Transport Commission (see s. 1 (1) *ante*).

*Power to acquire an undertaking by agreement.*—See ss. 2 (2) (f) and 4 (4), *ante*. As to compensation to officers and servants where an undertaking is acquired by agreement, see s. 102, *post*.

*Orders and regulations.*—As to orders and regulations, see s. 120, *post*.

*Special parliamentary procedure.*—The Statutory Orders (Special Procedure) Act, 1945, s. 1 (38 Halsbury's Statutes 441), provides that where, by any Act passed after the passing of that Act, power to make or confirm orders is conferred on any authority, and provision is made requiring that any such order shall be subject to special parliamentary procedure, the provisions of that Act are to apply in relation to any order so made or confirmed.

*Definitions.*—For definitions of "liabilities," "the Minister" and "statutory provision," see s. 125 (1), *post*.

**8. Compulsory purchase of land.**—The Minister may authorise the Commission to purchase compulsorily any land which they require for any purpose connected with the discharge of their functions, and the Acquisition of Land (Authorisation Procedure) Act, 1946 (except section two thereof) shall apply as if the Commission were a local authority within the meaning of that Act and as if this Act had been in force immediately before the commencement of that Act. [1592]

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Acquisition of Land (Authorisation Procedure) Act, 1946.*—39 Halsbury's Statutes 52. The effect of providing that that Act is to apply as if the Commission were a local authority within the meaning of that Act and as if the present Act had been in force immediately before the commencement of that Act, is to make the uniform procedure for authorising compulsory purchase of land by local authorities provided by s. 1 (1) thereof and Sched. 1 thereto, applicable to compulsory purchases by the Commission.

This is not the first occasion on which the provisions of that Act have been extended to cover a power of compulsory purchase of land conferred since the commencement of that Act; see, for example, the National Health Service Act, 1946, s. 58 (3) (39 Halsbury's Statutes 563).

S. 2 of the Acquisition of Land (Authorisation Procedure) Act, 1946, which is excluded from applying to the Commission, provides for a limited period a speedy method of acquiring land in cases of urgency.

*Definition.*—For definition of "the Minister," see s. 125 (1), *post*.

**9. Power of Commission as to promoting and opposing Bills and orders.**—

(1) The Commission may, with the consent of the Minister, promote Bills in Parliament and may oppose any Bill in Parliament. [1593]

(2) The power conferred by subsection (1) of this section shall be in lieu of any power to promote or oppose Bills which the Commission might otherwise possess under any of the provisions of this Act as successors to the persons carrying on any undertaking, but nothing in this section shall be construed as prejudicing any power exercisable by the Commission as such successors as aforesaid to apply for orders, and oppose applications for orders, including orders subject to special parliamentary procedure. [1594]

*General note.*—This section may be compared with s. 10 of the Electricity Act, 1947 (see title ELECTRICITY SUPPLY, *ante*).

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Special parliamentary procedure.*—See note to s. 7, *supra*.

**10. Commission not to be exempted from taxation, etc.**—Nothing in this Act shall be deemed to exempt the Commission from liability for any tax, duty, rate, levy or other charge whatsoever, whether general or local. [1595]

*General note.*—This section is in identical terms with s. 47 of the Coal Industry Nationalisation Act, 1946 (39 Halsbury's Statutes 293), and s. 20 of the New Towns Act, 1946 (39 Halsbury's Statutes 680). Compare also s. 11 of the Electricity Act, 1947 (see title ELECTRICITY SUPPLY, *ante*).

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

**11. Liability of Commission in actions, etc.**—(1) The Public Authorities Protection Act, 1893, and section twenty-one of the Limitation Act, 1939, shall not apply to any action, prosecution or proceeding against the Commission or an Executive or for or in respect of any act, neglect or default done or committed by a servant or agent of the Commission or an Executive in his capacity as a servant or agent of theirs. [1596]

(2) In their application to any such action as aforesaid sections two and three of the Limitation Act, 1939 (which relate to the limitation of actions of contract and tort, and certain other actions) shall have effect with the substitution for references therein to six years of references to three years. [1597]

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Public Authorities Protection Act, 1893.*—13 Halsbury's Statutes 455.

*Limitation Act, 1939, ss. 2, 3, 21.*—32 Halsbury's Statutes 225, 226, 235.

*Effect of section.*—The effect of sub-s. (1) is to exclude the Commission, Executives, etc. from the protection afforded to public authorities whereby criminal proceedings against them must be commenced within six months (see the Public Authorities Protection Act, 1893, s. 1, as amended by the Limitation Act, 1939, s. 34 (4) and Sched.).

As a result of sub-s. (2), actions against the Commission, etc. founded on simple contract or on tort and certain other actions, must be commenced within three years. It should be noted that sub-s. (2) does not alter the limitation periods of twelve years and two years respectively laid down by s. 2 (3), (4) and (5) of the Act of 1939, in respect of actions on specialties and judgments, and actions to recover penalties.

The section is in identical terms with the Coal Industry Nationalisation Act, 1946, s. 49 (1), (2) (39 Halsbury's Statutes 294); the New Towns Act, 1946, s. 17 (39 Halsbury's Statutes 679), and the Electricity Act, 1947, s. 12 (see title ELECTRICITY SUPPLY, *ante*).

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## PART II

### RAILWAYS AND CANALS

#### *Acquisition of Railway and Canal Undertakings*

\* \* \* \* \*

**25. Application of preceding provisions to local authorities.**—(1) Where a body specified in the Third Schedule to this Act are a local authority, the following provisions of this section shall have effect. [1598]

(2) Only the undertaking which was under the control of the Minister under Regulation sixty-nine of the Defence (General) Regulations, 1939, shall vest by virtue of this Act in the Commission, and the provisions of this Part of this Act relating to the effect of the vesting of undertakings and to the disclaimer of agreements shall have effect, and have effect only, in respect of property held or used by the authority for the purposes of that undertaking and rights, liabilities, agreements, statutory provisions, documents, legal proceedings and applications of, referring to, by and against the authority which either were wholly or mainly held or were acquired or incurred for the purposes of, or relate to, that undertaking. [1599]

(3) The Commission shall not, by virtue of any of the preceding provisions of this Part of this Act, come under any liability, or have any rights or powers, in respect of any securities of the local authority or any sinking fund established for the redemption of any such securities, but the Commission shall, as consideration for the vesting in them of the undertaking and (subject to the provisions of section one hundred and fourteen of this Act) in lieu of any other compensation in respect of the vesting make to the authority the payments mentioned in the next two succeeding subsections. [1600]

(4) Where the authority have, by the issue of securities, raised money wholly or partly for the purposes of the undertaking or have advanced money for those purposes out of any consolidated loans fund or mortgage loans pool established by them or out of any other moneys held by them, and, in pursuance of the arrangements in force immediately before the date of transfer for the redemption of the loan and the payment of interest thereon or, as the case may be, for the repayment of the advance and the payment of interest thereon, any amounts would, but for the vesting of the undertaking in the Commission, have fallen, on or after the date of transfer, to be debited in the accounts of the undertaking, the Commission shall, subject to the provisions of this section, pay those amounts to the authority at the times at which, but for the vesting, those amounts would have fallen to be debited in the accounts of the undertaking. [1601]

(5) Where the authority have before the date of transfer made arrangements for the making of financial adjustments, as between the accounts of the undertaking and any other account kept by the authority, in respect of any

other transaction or matter affecting both the undertaking and other activities of the authority, and in pursuance of those arrangements any amounts would, but for the vesting of the undertaking in the Commission, have fallen, on or after the date of transfer, to be debited or credited in the accounts of the undertaking and credited, or, as the case may be, debited in some other account of the authority, the Commission shall, subject to the provisions of this section, pay those amounts to the authority or be entitled to receive those amounts from the authority, as the case may be, at the times at which, but for the vesting, those amounts would have fallen to be debited or credited in the accounts of the undertaking :

Provided that this subsection shall not apply in relation to any apportionment of the establishment charges of the authority between the accounts of the undertaking and other accounts of the authority. [1602]

(6) The Commission and the authority may agree or the Minister of Health may, on the application of the Commission or the authority in default of such agreement, determine that, having regard to the circumstances in which any such arrangements were made and the circumstances arising under this Act, the last preceding subsection shall not apply to those arrangements or shall apply thereto with such modifications as to the payments to be made by the Commission or the authority as may be so agreed or determined, and the said subsection shall have effect subject to any such agreement or determination.

Any other question arising under either of the two last preceding subsections as to the payments to be made thereunder shall, in default of agreement, be determined by the Minister of Health. [1603]

(7) Any payment made by the Commission or the authority under the preceding provisions of this section which would, but for the vesting of the undertaking in the Commission, have been debited or credited as a capital payment, shall be deemed to be a capital payment, and any other such payment shall be deemed to be an annual payment. [1604]

(8) Notwithstanding anything in any statutory provision, the authority shall not be entitled to any profit or be required to bear any loss arising in the carrying on by the Commission on or after the date of transfer of the part of the Commission's undertaking corresponding to the undertaking of the authority. [1605]

(9) So much of any of the preceding provisions of this Part of this Act or of any provision of the Fifth Schedule to this Act as operates in relation to securities of a body mentioned in the Third Schedule to this Act held by another such body or in relation to any interest in any securities of any such body belonging to another such body shall not apply in relation to securities held by the authority or, as the case may be, in relation to any interest belonging to the authority, unless the securities or, as the case may be, the interest were or was acquired by the authority in connection with the undertaking which vests in the Commission. [1606]

(10) Save as aforesaid, nothing in the preceding provisions of this Part of this Act shall apply in relation to the authority or the undertaking thereof. [1607]

*General note.*—With the exception of this section, Part II of the Act, which deals exclusively with railways and canals, is not here printed since it falls outside the scope of this Volume.

The present section, however, in addition to applying the preceding provisions of Part II to local authorities (as to which see the succeeding note), is also relevant to the determination of compensation to be paid to local authorities under schemes made under Part IV, namely, area road transport schemes (as to which see ss. 63–65 and Sched. VIII, *post*), and schemes as to harbours (as to which see title HARBOURS, DOCKS AND WHARVES, *ante*).

Sched. VIII, para. 1 (1), proviso (a), *post*, enacts in effect that any such scheme which provides for the transfer of an undertaking carried on by a local authority (which term is defined by s. 125 (1), *post*, as extended by the said para. 1 (1), to mean a county council, the Common Council of the City of London, a county borough council or a county district council) or by a joint committee, joint board, joint authority or other combined body, all the members of which are or are representative of local authorities, must contain provisions for compensating that authority or body which are identical, as near as may be, with the provisions for compensating local authorities made by the present section.

The payments to be made for compensation are laid down in sub-ss. (4) and (5) of the present section.

Sub-s. (4) provides for the making of payments to cover as from the date of transfer the liability of an authority which has, for the purposes of the transferred undertaking, raised money by the issue of securities or advanced money for those purposes out of moneys held by them; while sub-s. (5) provides for the Commission's paying to, or as the case may be receiving from, the authority the amount of any adjustments which would, but for the transfer of the undertaking, have fallen to be made on or after the date of transfer in pursuance of any arrangements the authority may have made for adjusting the accounts of the undertaking with any other account kept by the authority in respect of any transaction or matter affecting both the undertaking and the other activities of the authority.

Sub-s. (5) does not, however, apply to any apportionment of the establishment charges of the authority, and may be excluded or modified by agreement between the Commission and the authority or, in default of agreement, by determination of the Minister of Health in accordance with sub-s. (6). Any other question as to the payments to be made under sub-ss. (4) and (5) is, in default of agreement, to be determined by the Minister of Health.

It may be noted that s. 114, *post*, provides for the payment of additional compensation to a local authority from which an undertaking is transferred under a scheme made under Part IV of this Act. A right of pre-emption for local authorities may also arise as the result of the acquisition of an undertaking by the Commission (see s. 115, *post*).

*Sched. III.*—Sched. III specifies the bodies owning railway, canal or inland navigation undertakings which are transferred to the Commission in accordance with the preceding provisions of Part II of the Act.

Only one local authority is affected, namely, Nottingham Corporation in respect of the Trent Navigation Undertaking. Since, with the exception of this section, Part II and Sched. III are not of concern to local authorities generally, they are omitted from this Volume.

As to the reason for including the present section, see General note, *ante*.

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Definition.*—For definition of "statutory provision," see s. 125 (1), *post*.

\* \* \* \* \*

## PART III

### TRANSPORT OF GOODS BY ROAD

#### *Acquisition of certain undertakings by the Commission*

#### **39. Certain road transport undertakings to be acquired by Commission.—**

(1) Where the Commission are of opinion with respect to an undertaking the activities of which consist wholly or partly of the operation of any vehicles authorised to be used under any A licence or B licence—

- (a) that the undertaking or any part thereof was carried on (whether by the same person or not) during the whole or any part of the year nineteen hundred and forty-six; and
- (b) that the activities of the undertaking in that year, so far as they consisted of the carriage of goods in goods vehicles (being vehicles with respect to which a licence, of whatever class, was in force), consisted to a predominant extent of ordinary long distance carriage for hire or reward,

it shall be the duty of the Commission to give, in accordance with the subsequent provisions of the Part of this Act, a notice of acquisition with respect to the undertaking:

Provided that if the Commission, having due regard to their duties under subsection (1) of section three of this Act, are of the opinion that, by reason of the special character of an undertaking which fulfils the aforementioned conditions, or by reason of the goods carried or the locality served by that undertaking, it is expedient to make an exception in that case, the Commission may enter into an agreement with the person carrying on that undertaking that, subject to such conditions, if any, as may be specified in the agreement, a notice of acquisition shall not be given with respect thereto or, as the case may be, that, subject to such conditions, if any, as may be specified in the agreement, a notice of acquisition duly given shall be withdrawn; and where any such agreement is concluded, the Commission shall be released from their duty under this subsection to give a notice of acquisition with respect to that undertaking, but may, if they think fit, give such



a notice in the event of any breach of the conditions specified in the agreement, and any notice of acquisition so given shall have effect as if no such agreement had been entered into. [1608]

(2) In this Part of this Act, the expression "ordinary long distance carriage" means, in relation to an undertaking, the carriage of goods by the person carrying on the undertaking for a distance of forty miles or upwards in one goods vehicle or a succession of goods vehicles, in such circumstances that the vehicle, or, as the case may be, one or more of the vehicles, is, at some time during the carriage, more than twenty-five miles from its operating centre :

Provided that the carriage of liquids carried in bulk in a tank permanently fixed to the vehicle, or in a tank not so fixed of which the capacity is not less than five hundred gallons, the carriage of goods of a special character which, under any statutory provision specifically relating thereto, may only be carried in a vehicle constructed or adapted so as to comply with the requirements of that provision and which are being so carried, ordinary furniture removals, the carriage of meat, the carriage of livestock, the carriage of felled timber in a vehicle specially constructed for the purposes of such carriage, any carriage effected wholly in vehicles specially constructed to carry abnormal indivisible loads and the carriage, in a vehicle in which no other goods are being carried for hire or reward, of apparatus or equipment ancillary to the operation, for the purposes of the carriage of such loads, of such a specially constructed vehicle shall not be treated as ordinary long distance carriage. [1609]

(3) The distance of forty miles mentioned in subsection (2) of this section shall, notwithstanding anything in section thirty-four of the Interpretation Act, 1889, be measured along the route actually taken by the vehicle or vehicles in question. [1610]

*General note.*—This section is the first of a number of sections dealing with the acquisition of long distance road haulage undertakings by the Commission. It imposes upon the Commission the duty (subject, however, to the exercise of a discretionary power in certain cases) to give notice of acquisition with respect to all undertakings which in their opinion fall within the formula of acquisition set out in the section. See, generally, the Preliminary Note, *ante*.

As to the application of the formula to controlled undertakings and to undertakings whose vehicles were hired to the Minister through the Road Haulage Organisation, see s. 42, *post*; as to its application to mergers, see s. 43, *post*. The Commission may be required to serve notice of acquisition with respect to certain undertakings not falling within the formula of acquisition: see s. 54 (1), *post*.

In moving the Second Reading of the Bill, the Minister of Transport stated that there were approximately 86,000 A licence vehicles belonging to 19,000 licence holders and 53,000 B licence vehicles belonging to 27,000 licence holders. He estimated that between 2,000 and 2,500 undertakings involving approximately 20,000 vehicles would be transferred to the Commission under this Part of the Act. In addition, under Part II of the Act the Commission would acquire goods vehicles belonging to or controlled by the railway undertakings making an overall total, according to the Minister's estimate, of between 30,000 and 35,000 goods vehicles to be compulsorily acquired by the Commission (see 481 H. of C. Official Report 1630).

For the purpose of ascertaining whether or not notice of acquisition should be served with respect to a particular undertaking, the Commission may require information from the licensing authority for any traffic area and from any undertaking operating A or B licence vehicles (see s. 51 (1), (2), *post*).

As to the duty of a person, to whom a notice of acquisition has been given, to produce books and other documents and to supply information to the Commission, see s. 51 (3), *post*. He must preserve all such documents until they are handed over to the Commission, or, if retained by him, until six months after the date of transfer (see s. 51 (4), *post*). As to the Commission's duty to keep the Transport Arbitration Tribunal informed of any acquisitions, see s. 110 (3), *post*.

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Predominant extent.*—As to the determination in arbitration proceedings of the question whether or not, in any particular case, ordinary long distance carriage for hire or reward predominates, see s. 41, *post*.

*Notice of acquisition.*—The time and manner of service of a notice of acquisition and the particulars to be contained therein will be prescribed by regulations made by the Minister (see ss. 40 (5) and 119, *post*). As to the general effect of a notice of acquisition, see s. 45, *post*.

*Ordinary long distance carriage.*—Ordinary long distance carriage as defined by sub-s. (2), *supra*, may be compared and contrasted with the carriage of goods for hire or reward which is restricted, as from the appointed day, by s. 52 (1), *post*.



The carriage of goods in a vehicle which does not go more than twenty-five miles from its operating centre is excluded both from ordinary long distance carriage and from the restrictions imposed by s. 52 (1), *post*. In addition, the carriage of these special classes of goods excluded, by the proviso to sub-s. (2), *ante*, from ordinary long distance carriage is also excluded from the said restrictions by the proviso to s. 52 (1), *post*. But while any journey for a distance of less than forty miles, even though going beyond the twenty-five mile limit, is excluded from ordinary long distance carriage, there is no exemption for such a journey from the restrictions imposed by s. 52 (1), *post*.

*Goods of a special character.*—For example, petroleum spirit, the conveyance of which by road is governed by the Petroleum (Consolidation) Act, 1928, s. 6 (13 Halsbury's Statutes 1173), and the regulations made thereunder.

*Interpretation Act, 1889, s. 34.*—18 Halsbury's Statutes 1004. This section, the application of which to the measurement of the distance of forty miles mentioned in sub-s. (2), *ante*, is excluded by sub-s. (3), *ante*, provides that, in the measurement of any distance for the purposes of any Act passed after the commencement of that Act, that distance shall unless the contrary intention appears be measured in a straight line on a horizontal plane.

*Definitions.*—For definitions of "A licence," "B licence," "carriage of goods" and "goods vehicle," see note to s. 41, *post*. For definitions of "abnormal indivisible load," "operating centre," "ordinary furniture removal" and "statutory provision," see s. 125 (1), *post*.

**40. Notices of acquisition.**—(1) A notice of acquisition given by the Commission with respect to an undertaking shall be in writing and shall be served on the person carrying on the undertaking. [1611]

(2) If a person on whom a notice of acquisition has been served by the Commission with respect to an undertaking desires to contend that the undertaking is not one with respect to which the Commission are required or entitled to give a notice of acquisition under the last preceding section, he may by notice in writing served on the Commission require the Commission to withdraw their notice. [1612]

(3) Where the Commission receives such a notice as is referred to in subsection (2) of this section, they shall, if satisfied that the contention of the person carrying on the undertaking is correct, withdraw their notice, but in any other case the question whether or not the notice given by the Commission is to have effect shall, unless the owner of the undertaking withdraws his notice, be determined by the arbitration tribunal established under Part VIII of this Act. [1613]

(4) Where a person carrying on an undertaking with respect to which no notice of acquisition has been served by the Commission desires to contend that the undertaking is one with respect to which the Commission are required to give a notice of acquisition, he may by notice in writing served on the Commission require the Commission to serve a notice of acquisition in respect thereof and, if the Commission fail or refuse to serve such a notice, the question whether or not the Commission are to serve such a notice shall, unless the owner of the undertaking withdraws his notice, be determined by the arbitration tribunal established under Part VIII of this Act. [1614]

(5) A notice of acquisition, and any other notice given under this section, shall be served in the prescribed manner and within the prescribed time, and shall embody such particulars, if any, as to the grounds on which the notice is given, as may be prescribed. [1615]

*General note.*—This section deals with notices of acquisition which s. 39 (1), *ante* (as applied by ss. 42 (1), 43, *post*), makes it the duty of the Commission to give in respect of undertakings coming within the formula of acquisition set out in s. 39, *ante*.

Provision is made for the determination by the Transport Arbitration Tribunal of the question whether or not notices of acquisition are to have effect, and, in cases where no notice has been served, of the question whether or not such notice should be given.

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Notice of acquisition.*—As to the Commission's duty to give a notice of acquisition, see s. 39 (1), *ante* (as applied by ss. 42 (1), 43, *post*; and see s. 54 (1), *post*). The time and manner of service of a notice of acquisition and the particulars to be contained therein will be prescribed by regulations made by the Minister (see sub-s. (5), *supra*, and s. 119, *post*).

As to the general effect of a notice of acquisition, see s. 45, *post*.

*Arbitration tribunal.*—The Transport Arbitration Tribunal (see s. 105 (1), *post*). Subject to the provisions of s. 106 (3), *post*, under which a question of law may be stated in the form of a special case for determination by the Court of Appeal, the Arbitration Tribunal have sole jurisdiction in proceedings under this section (see s. 109 (1), *post*).

It should be noted that the proviso to s. 41 (1), *post*, which relates to proceedings under

this section, has the effect of excluding the application of the doctrine of the onus of proof in such proceedings.

An amendment was made on the Committee Stage of the Bill in the House of Lords inserting a subsection to provide that in proceedings before the Arbitration Tribunal under this section the burden of proof that an undertaking was an undertaking specified in s. 39, *ante*, should be upon the person contending that the undertaking was such. The House of Commons subsequently disagreed with the Lords in the Amendment and it was not insisted upon.

The Lord Chancellor, in opposing the Amendment, drew a distinction between proceedings before the Tribunal and proceedings in a court of law. He said :—

"If it is a voluntary suit by way of arbitration, or by way of being brought in the courts, then the doctrine of the onus of proof applies. That I would agree to. But my case is that it is not of that nature at all. Here certain facts are alleged. Clause 39 says to the Commission that if they believe these facts they are bound to serve a notice—there is no option. They may not want to serve it, but the law says they must serve it, and when they serve that notice of acquisition, then these various steps follow. . . . That being so, I say that to apply the doctrine of the onus of proof is entirely wrong. It is as wrong as it would be for a shepherd if he were told to separate the sheep from the goats, to try to make any use of the doctrine of proof. . . . If the tribunal has not got all the circumstances and the figures to enable it [to apply s. 39], then it must do the best it can, getting such information as it can from petrol returns, from notepaper and from the knowledge which in the vast majority of cases of these big firms is to be obtained from their customers, who are well known. The tribunal must get such evidence as it can, and draw an inference one way or the other as to which category this undertaking falls into" (148 H. of L. Official Report 925).

*Required or entitled.*—These alternative words are necessary since, while it is in the normal case the duty of the Commission to give a notice of acquisition with respect to all the undertakings which comply with the formula of acquisition laid down in s. 39 (1), *ante*, the giving of such a notice in certain exceptional cases will be at their discretion.

These exceptional cases may arise under the proviso to s. 39 (1), which provides in certain circumstances for the Commission making agreements not to give a notice in respect of a particular undertaking, such an agreement having the effect of absolving the Commission from their duty to give such a notice. The proviso to s. 39 (1) further provides, however, that the Commission shall, in the event of any breach of the agreement, be *entitled*, if they think fit, to give a notice of acquisition.

**41. Tests as to whether ordinary long distance carriage for hire or reward predominates.**—(1) For the purposes of any proceedings under the last preceding section before the arbitration tribunal established under Part VIII of this Act, the activities of an undertaking in the year nineteen hundred and forty-six, so far as they consisted in the carriage of goods in goods vehicles with respect to which A licences, B licences or C licences were in force, shall be deemed to have consisted to a predominant extent of ordinary long distance carriage for hire or reward if, and, save as is hereinafter provided in this subsection, only if, one or other of the following conditions was satisfied as respects the undertaking in that year, that is to say—

- (a) the total weight of the goods which were the subject of ordinary long distance carriage for hire or reward in the said goods vehicles exceeded half the total weight of all the goods carried in those vehicles; or
- (b) the receipts of the undertaking from ordinary long distance carriage for hire or reward exceeded half the total value to the undertaking of the services of the vehicles,

and the question whether the notice of acquisition to which the proceedings relate is to have effect, or, as the case may be, the question whether a notice of acquisition shall be served, shall be determined accordingly :

Provided that if the information available in any such proceedings is insufficient to enable the tribunal to conclude either that one or other of the said conditions was satisfied as aforesaid or that neither of the conditions was so satisfied, the tribunal shall determine that the activities of the undertaking in the said year, so far as they consisted of the carriage of goods in goods vehicles in respect of which licences were in force, consisted to a predominant extent of ordinary long distance carriage for hire and reward, if it appears to the tribunal, from the information available in those proceedings, that those activities ought, in all the circumstances, properly to be regarded as having consisted to a predominant extent of such carriage.

(2) Where, in the year nineteen hundred and forty-six, goods were carried for hire or reward and the carriage thereof was charged for by weight but with a provision that, in particular circumstances, the weight thereof should be taken to be a weight calculated by reference to the volume thereof, the weight of those goods shall, in those circumstances, be taken for the purposes of paragraph (a) of subsection (1) of this section to have been a weight similarly calculated. [1617]

(3) Where in the year nineteen hundred and forty-six goods were carried for hire or reward and the carriage thereof was charged for by volume ascertained by means of calibration marks on a vehicle, stamped with a stamp of verification under section twenty-nine of the Weights and Measures Act, 1878, the weight of the goods shall be calculated for the purposes of paragraph (a) of the said subsection (1) at such ratio to the volume ascertained as aforesaid as is customary in relation to those goods in the appropriate trade or industry. [1618]

(4) Where, in the year nineteen hundred and forty-six, goods were carried for hire or reward and the carriage thereof was charged for by volume, ascertained otherwise than by means of calibration marks on the vehicle, the weight of those goods shall be taken for the purposes of paragraph (a) of the said subsection (1) to have been one ton for every eighty cubic feet of the volume of the goods, and so proportionately for volumes which are not an exact multiple of eighty cubic feet. [1619]

(5) For the purposes of paragraph (b) of the said subsection (1), the total value to the undertaking of the services of the vehicles therein referred to shall be ascertained by adding together—

(a) the receipts of the undertaking in respect of carriage for hire or reward in those vehicles; and

(b) a sum in respect of goods carried therein otherwise than for hire or reward equal to the amount which it would have been reasonable for the person carrying on the undertaking to charge for the carriage thereof if he had been lawfully carrying them for hire or reward,

any carriage which could be effected without a licence being in force in respect of the vehicle being left out of account. [1620]

*General note.*—This section ties up with ss. 39 and 40, *ante*. S. 39 (1), *ante*, imposes upon the Commission a duty to serve a notice of acquisition with respect to certain undertakings the activities of which in 1946 in their opinion, so far as they consisted in the carriage of goods in goods vehicles, consisted to a predominant extent of ordinary long distance carriage for hire or reward. Ordinary long distance carriage is defined in s. 39 (2), *ante*.

S. 40 (3), (4), *ante*, provides for referring certain questions connected with notices of acquisition to the Transport Arbitration Tribunal. The present section lays down the tests to be applied in such proceedings by the tribunal for determining whether or not ordinary long distance carriage for hire or reward predominates.

It should be noted that the effect of the proviso to sub-s. (1), *ante*, is to exclude the general principle as to the onus of proof in proceedings to which this section applies (see note to s. 40, *ante*, on "Arbitration tribunal").

As to the modifications subject to which the section has effect in relation to an undertaking any of the goods vehicles of which were in 1946 under hire to the Minister through the Road Haulage Organisation, see s. 42 (2), *post*.

*The arbitration tribunal.*—The Transport Arbitration Tribunal (see s. 105 (1), *post*). See also note to s. 40, *ante*.

*Ordinary long distance carriage.*—As to the meaning of this expression, see s. 39 (2), *ante*.

*Information.*—As to the power of the Commission to obtain information for the purpose of ascertaining whether or not an undertaking is one they are bound to acquire, see s. 51, *post*.

*Weights and Measures Act, 1878, s. 29.*—20 Halsbury's Statutes 376.

*Goods carried otherwise than for hire or reward.*—This means goods carried by a B or C licence holder for or in connection with any trade or business carried on by him or by an A licence holder for or in connection with his business as a carrier of goods (see the Road and Rail Traffic Act, 1933, s. 2; 26 Halsbury's Statutes 874).

The inclusion of a sum in respect of such goods in the calculation to be made for determining whether the carriage of goods in 1946 consisted to a predominant extent of ordinary long distance carriage for hire or reward weighs in the balance against an undertaking falling within the formula of acquisition (as to which, see s. 39 (1), *ante*).

*Carriage effected without a licence.*—As to carriage which may be effected without a licence, see sub-s. (7) of s. 1 of the Road and Rail Traffic Act, 1933 (26 Halsbury's Statutes 873); this subsection provides that that section (which prohibits the use of a goods vehicle on

a road for the carriage of goods either for hire or reward or in connection with any trade or business except under licence) is not to apply to the use of a vehicle for the purposes set out in the subsection.

*Definitions.*—S. 125 (2), *post*, provides that except in so far as the context otherwise requires, expressions used in this Part of the Act have the same meaning as in the Road and Rail Traffic Act, 1933 (26 Halsbury's Statutes 870). Accordingly, subject to the exception mentioned, the following definitions contained in the 1933 Act are applicable to expressions used in this Part of the present Act :—

"Goods vehicle" means a motor vehicle constructed or adapted for use for the carriage of goods, or a trailer so constructed or adapted (s. 1 (2)).

"Carriage of goods" includes the haulage of goods (s. 36 (1)).

"Goods" includes goods or burden of any description (s. 36 (1)).

"An A licence" is a public carrier's licence. S. 2 (2) of the 1933 Act provides that an A licence shall entitle the holder thereof to use the authorised vehicles (which expression means in relation to any licence any vehicles authorised to be used thereunder; see s. 2 (5) of the Act of 1933), for the carriage of goods for hire or reward, or for the carriage of goods for or in connection with his business as a carrier of goods, whether by road transport or any other kind of transport, but that it shall be a condition of the licence that no vehicle which is for the time being an authorised vehicle shall be used for the carriage of goods for or in connection with any other trade or business carried on by him except such storage or warehousing of goods as may be incidental to his business as a carrier.

The said s. 2 (2) provides further that in relation to a licence held by a person carrying on a canal, dock or harbour undertaking, the reference in the subsection to the use of vehicles for the carriage of goods for or in connection with the business of the holder of a licence as a carrier of goods shall include a reference to the use of vehicles for the carriage of goods for, or in connection with, that undertaking.

"A B licence" is a limited carrier's licence. S. 2 (3) of the Act of 1933 provides that a B licence shall entitle the holder thereof to use the authorised vehicles, as he thinks fit from time to time, either for the carriage of goods for or in connection with any trade or business carried on by him, or, subject to any conditions which the licensing authority, in the exercise of his discretion to attach conditions to a B licence, may attach to the licence, for the carriage of goods for hire or reward.

"A C licence" is a limited carrier's licence. S. 2 (4) of the Act of 1933 provides that a C licence shall entitle the holder thereof to use the authorised vehicles for the carriage of goods for or in connection with any trade or business carried on by him, subject to the condition that no vehicle which is for the time being an authorised vehicle shall be used for the carriage of goods for hire or reward.

The said s. 2 (4) further provides that, notwithstanding anything in Part I of the Act of 1933, the licensing authority may, in a case of emergency and subject to such conditions as he thinks fit to impose, authorise the holder of a C licence to use an authorised vehicle for the carriage of goods for any person to whom he lets the vehicle, if the authority is satisfied that the needs of that person cannot conveniently be met from other sources.

"Trailer" means a vehicle drawn by a motor vehicle (s. 36 (1)).

**42. Application of preceding provisions to controlled undertakings and vehicles hired by the Minister.**—(1) Where, by virtue of a Road Haulage Organisation control agreement, the whole or any part of an undertaking the activities of which consist wholly or partly of the operation of any vehicles authorised to be used under any A licence or B licence was under the control of the Minister during any part of the year nineteen hundred and forty-six—

- (a) the person carrying on the undertaking may, if he thinks fit, require the Commission to serve a notice of acquisition with respect to the undertaking whether or not the conditions requisite under the preceding provisions of this Part of this Act, so far as they relate to the facts of the said year, are satisfied in relation to the undertaking, and the preceding provisions of this Part of this Act shall have effect in relation to any such requirement as if the said conditions were satisfied so far as they relate to the facts of that year; and
- (b) if he does not duly require the Commission to serve a notice of acquisition, the question whether the said conditions are satisfied shall be determined as if the undertaking had first begun to be carried on at the date when the agreement ceased to have effect. [1621]

(2) Where, at any time during the year nineteen hundred and forty-six, any of the goods vehicles used for the purposes of an undertaking were under hire to the Minister under any agreement incorporating, with or without modifications, the General Conditions of Hire of Goods Road Motor Vehicles, then, in determining whether the activities of the undertaking, so far as they consisted of the carriage of goods in goods vehicles with respect

to which licences were in force, consisted to a predominant extent in ordinary long distance carriage for hire or reward, the last preceding section shall have effect in relation to the undertaking subject to the following modifications, that is to say either—

- (a) the undertaking shall be taken to have first begun to be carried on at the date when the agreements ceased to have effect ; or
- (b) if the person carrying on the undertaking elects that this paragraph shall apply, paragraph (a) of subsection (1) of the last preceding section shall not apply and, for the purposes of paragraph (b) thereof, all vehicles which were at any time under hire under any such agreement shall, as respects any period for which they were under hire under the agreement, be treated as if all the goods carried therein were carried by way of ordinary long distance carriage for hire or reward, and all sums paid by the Minister under any such agreement shall be treated as receipts of the undertaking from ordinary long distance carriage for hire or reward. [1622]

(3) In this section—

the expression “ a Road Haulage Organisation control agreement ” means an agreement for the control of the whole or any part of an undertaking, incorporating, with or without modifications, the memorandum of financial arrangements dated the second day of February, nineteen hundred and forty-three, which was issued on behalf of the Minister for the purposes of the Road Haulage Organisation brought into being in that year ; and

the expression “ the General Conditions of Hire of Goods Road Motor Vehicles ” means the document issued on behalf of the Minister in the month of April, nineteen hundred and forty-three, in connection with the said Road Haulage Organisation, entitled “ The General Conditions of Hire of Goods Road Motor Vehicles (Long Distance Services) ”. [1623]

*Road Haulage Organisation.*—The Road Haulage Organisation was set up by administrative action of the Minister of War Transport in connection with war-time control of long distance road haulage. Through the Organisation there was made available for essential purposes a pool of some 34,000 goods vehicles, consisting of some 32,000 vehicles belonging to undertakings which were controlled by the Minister under Road Haulage Organisation control agreements, and some 2,000 vehicles which were hired to the Minister through the Organisation. The Organisation was wound up on August 17, 1946.

*Notice of acquisition.*—The time and manner of service of a notice of acquisition and the particulars to be contained therein will be prescribed by regulations made by the Minister (see s. 40 (5), *ante*, and s. 119, *post*).

As to the general effect of a notice of acquisition, see s. 45, *post*.

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Date when the agreement ceased to have effect.*—August 17, 1946.

*Ordinary long distance carriage.*—As to the meaning of this expression, see s. 39 (2), *ante*.

*The Minister.*—It may be noted that this expression is used in two slightly different senses in this section : in sub-ss. (1) and (2) it means either the Minister of Transport or the Minister of War Transport according to the date, and in sub-s. (3) it means the Minister of War Transport (see the definition of the expression in s. 125 (1), *post*). The Ministry of War Transport was dissolved and the functions of the Minister transferred to the Minister of Transport as from April 1, 1946, by S. R. & O., 1946, No. 375.

*Definitions.*—For definitions of “ goods vehicle,” “ carriage of goods,” “ goods,” “ A licence ” and “ B licence,” see notes to s. 41, *ante*.

**43. Application of preceding provisions to mergers, etc.**—(1) Where, on or after the twenty-eighth day of November, nineteen hundred and forty-six, an undertaking becomes, as the result of an acquisition or merger, part of another undertaking, and the conditions requisite under the preceding provisions of this Part of the Act for the giving of a notice of acquisition with respect to the first-mentioned undertaking are satisfied so far as they relate to the facts of the said year, the said conditions, so far as they relate to the said facts, shall be deemed to be satisfied with respect to the whole of the second mentioned undertaking and, in the case of subsequent acquisitions

or mergers, with respect also to the whole of any other undertaking which indirectly represents the first mentioned undertaking :

Provided that where the first mentioned acquisition or merger took place before the end of the year nineteen hundred and forty-six, any reference in the preceding provisions of this Part of this Act to the year nineteen hundred and forty-six shall, in relation to the first mentioned undertaking, be treated as a reference to so much of that year as preceded the acquisition or merger. [1624]

(2) Where an undertaking which was being carried on immediately before the said twenty-eighth day of November directly or indirectly represented, as the result of an acquisition or merger or a series of acquisitions or mergers, other undertakings which were carried on in the said year, any reference in the preceding provisions of this Part of this Act to an undertaking shall, so far as they relate to the facts of the said year, be construed, as respects that undertaking, as a reference to that undertaking and all the other undertakings which it represented as aforesaid, taken together. [1625]

November 28, 1946.—This is the day immediately following that on which the Bill received its First Reading.

*Notice of acquisition.*—As to the conditions requisite for the giving of a notice of acquisition, see s. 39 (1), *ante*, as applied by s. 42 (1), *ante*. The time and manner of service of a notice of acquisition and the particulars to be contained therein will be prescribed by regulations made by the Minister (see s. 40 (5), *ante*, and s. 119, *post*).

As to the general effect of a notice of acquisition, see s. 45, *infra*.

**44. Date of transfer under notice of acquisition.**—(1) Every notice of acquisition shall specify a date (not being earlier than the prescribed time after the service of the notice) on which, subject to the provisions of this section, the transfer to be effected in pursuance of the notice is to take effect. [1626]

(2) Where under subsection (2) of section forty of this Act the person on whom a notice of acquisition is served duly requires the Commission to withdraw the notice, the date on which the said transfer is to have effect shall be the date specified in the notice of acquisition or a date one month after the question whether the notice of acquisition is to have effect has been determined, whether by withdrawal of the owner's notice or by proceedings before the arbitration tribunal established under Part VIII of this Act, whichever of those dates is the later. [1627]

(3) The Commission and the person carrying on the undertaking may by agreement substitute another date for the date fixed under the preceding provisions of this section. [1628]

(4) The date fixed under the preceding provisions of this section is in this Part of this Act, and in the other provisions of this Act relating to transfers under this Part of this Act of undertakings or parts of undertakings, referred to as "the date of transfer". [1629]

*Notice of acquisition.*—As to the duty of the Commission to give a notice of acquisition, see s. 39 (1), *ante*, as applied by ss. 42, 43, *ante*; see also s. 54 (1), *post*.

The time and manner of service of a notice of acquisition and the particulars to be contained therein will be prescribed by regulations made by the Minister (see s. 40 (5), *ante*, and s. 119, *post*).

As to the general effect of a notice of acquisition, see s. 45, *infra*.

*Arbitration tribunal.*—The Transport Arbitration Tribunal (see s. 105 (1), *post*).

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

**45. General effect of notice of acquisition.**—(1) Subject to the provisions of this Part of this Act relating to disclaimer and subject, as respects any particular property or any particular contracts, to any agreement to the contrary made between the Commission and the person carrying on the undertaking (in this Part of this Act referred to as "the transferor"), the provisions of this section shall, where a notice of acquisition is given with respect to an undertaking and is not withdrawn or determined by arbitration to be of no effect, have effect in relation to—



- (a) property which immediately before the date of transfer was owned by the transferor and was held by him for the purposes of the undertaking; and
- (b) contracts, whether in writing or not and whether or not of such a nature that the rights or liabilities thereunder could be assigned by the transferor, being contracts to which the transferor was a party and which were made for the purposes of the carrying on of the undertaking :

Provided that where the operation of vehicles authorised to be used under A licences or B licences is only one of the activities of the undertaking, the said provisions shall have effect only in relation to property held wholly or partly for the purposes of that activity and in relation to contracts made wholly or partly for those purposes, and, without prejudice to the preceding provisions of this proviso, if the transferor gives notice to the Commission in such manner and within such time as may be prescribed that he desires that the provisions of this section shall not operate in relation to any specified property or contract, held or made partly for any purpose of the undertaking other than the purposes of that activity, the said provisions shall not have effect in relation thereto unless it is reasonably necessary for the purposes of the Commission that they should have effect.

The property and contracts in relation to which this section has effect are hereafter in this and the next succeeding section referred to respectively as "the relevant property" and "the relevant contracts". [1630]

(2) Subject to the provisions of this section, all the relevant property shall, on the date of transfer, vest in the Commission free from any mortgage or other like incumbrance. [1631]

(3) Subject to the provisions of this section, every relevant contract shall, unless its terms or subject matter make it impossible that it should have effect as modified in the manner provided by this subsection, have effect as from the date of transfer as if—

- (a) the Commission had been a party to the contract; and
- (b) for any reference (however worded and whether express or implied) to the transferor there were substituted, as respects anything falling to be done on or after the date of transfer, a reference to the Commission; and
- (c) any reference (however worded and whether express or implied) to, or to any part of, or to any sum determined by reference to, any profits or receipts of the undertaking were, as respects profits or receipts arising on or after the date of transfer, a reference to, or to the corresponding part of, or to a sum similarly determined by reference to, an estimate of what those profits or receipts would have been but for the transfer; and
- (d) any reference (however worded and whether express or implied) to the directors or any of the directors of the transferor (being a body corporate) were, as respects anything falling to be done on or after the date of transfer, a reference to such person as the Commission may appoint; and
- (e) any reference (however worded and whether express or implied) to any officer or any servant of the transferor were, as respects anything falling to be done on or after the date of transfer, a reference to such person as the Commission may appoint or, in default of appointment, to the officer or servant of the Commission who corresponds as nearly as may be to the first mentioned officer or servant; and
- (f) in the case of a contract for the rendering of personal services to the transferor, the services to which the contract relates were, on and



- after the date of transfer, any reasonably comparable services under the Commission, to be selected by the Commission ; and
- (g) save as provided by the four last preceding paragraphs, any reference (however worded and whether express or implied) to the undertaking to which the notice of acquisition relates were as respects the period beginning with the date of transfer a reference to so much of the undertaking of the Commission as corresponds to that undertaking :

Provided that any relevant contract which cannot have effect as modified in the manner provided by this subsection by reason only that, if it were so modified, no person other than the Commission would have any rights or liabilities thereunder shall cease to have effect as respects anything falling to be done on or after the date of transfer. [1632]

(4) Where at the date of transfer legal proceedings are pending by or against the transferor in connection with any of the relevant property or any of the relevant contracts, the Commission, if the circumstances so require, may be added as a party to the proceedings or substituted for the transferor as a party to the proceedings. [1633]

(5) Nothing in this section shall operate to transfer any cash to the Commission, and nothing in this section shall affect any right or liability with respect to the borrowing of money by the transferor, any right or liability with respect to the raising of money by the transferor by the issue of securities, any right or liability under any contract for the rendering by any person of personal services as a director (other than a managing director, or a director whose functions are substantially those of an employee), any right to, or liability to pay, any debt which became due before, or was in respect of a consideration wholly executed before, the date of transfer, or any right or liability to any damages which accrued before the date of transfer. [1634]

(6) Any question which arises as to whether any property is relevant property or any contract a relevant contract for the purposes of this section shall, in default of agreement, be determined by the arbitration tribunal established under Part VIII of this Act. [1635]

*General note.*—This section sets out the general effect of a notice of acquisition which has neither been withdrawn nor determined by the arbitration tribunal to be of no effect in accordance with s. 40 (3), *ante*. See, generally, Preliminary Note, *ante*.

*Disclaimer.*—As to disclaimer, see s. 46, *infra*.

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Notice of acquisition.*—As to the duty of the Commission to give a notice of acquisition, see s. 39 (1), *ante*, as applied by ss. 42 (1), 43, *ante*.

As to the withdrawal of a notice, see ss. 39 (1), proviso, 40 (2), (3), *ante*.

As to arbitration, see s. 41, *ante*.

*Date of transfer.*—See s. 44, *ante*.

*Arbitration Tribunal.*—The Transport Arbitration Tribunal (see s. 105 (1), *post*). Subject to the provision made by s. 106 (3), *post*, for an appeal to the Court of Appeal on a question of law, the arbitration tribunal have sole jurisdiction to determine any dispute to which the Commission is a party as to any questions under sub-s. (6), *supra* (see s. 109 (1) (e), *post*).

*Definitions.*—For definitions of "A licence" and "B licence," see notes to s. 41, *ante*; for "bonus," "director," "liability," "mortgage or other like encumbrance," "officer" and "property," see s. 125 (1), *post*.

**46. Disclaimer of property and contracts.**—(1) Where notice of acquisition is given with respect to an undertaking, the transferor shall, as soon as may be after the giving of the notice and in any case not later than fourteen days after the date of transfer or such later date as the Commission may allow, supply to the Commission particulars of all the relevant property acquired on or after the nineteenth day of November, nineteen hundred and forty-five, and of all the relevant contracts entered into or varied on or after that date, except such property and contracts as the Commission may exclude, either generally or in any particular case, from the operation of this subsection. [1636]

(2) Where any relevant property was acquired or any relevant contract entered into or varied on or after the said nineteenth day of November, and the acquisition of the property or the making or variation of the contract, as the case may be, was not reasonably necessary for the purposes of the undertaking, or was an act of unreasonable imprudence on the part of the person carrying on the undertaking, the Commission may, by notice in writing, in the case of property, given to the transferor before the expiration of the period hereafter mentioned, and in the case of a contract, given to the parties to the contract before the expiration of the said period, disclaim the property or the contract.

The said period is—

- (a) where particulars are given of the property or contract under subsection (1) of this section, three months from the date when the particulars are so given ;
- (b) where particulars ought to have been so given of the property or contract but have not been so given, three months from the date when the existence and full particulars of the property or the contract first become known to the Commission ; and
- (c) in any other case, three months from the date of transfer. [1637]

(3) Where notice is so given by the Commission with respect to any property, the provisions of the last preceding section shall have effect as if the property were not and had never been relevant property within the meaning thereof :

Provided that the giving of such a notice with respect to any property shall not affect any right exercised or falling to be exercised between the date of transfer and the date of the notice or any duty or liability falling to be performed or discharged during the said period [1638]

(4) Where notice is so given by the Commission with respect to any contract—

- (a) subsection (3) of the last preceding section shall be deemed never to have applied to the contract ; and
- (b) the contract shall be deemed to have been frustrated on the date of transfer and the parties thereto to have been for that reason discharged from the further performance thereof ; and
- (c) the like consequences shall follow as between the Commission and any party to the contract who, before the giving of the notice, has, in pursuance of the contract, supplied goods or rendered services to the Commission which the Commission have accepted or to whom, before the giving of the notice, the Commission have, in pursuance of the contract, supplied goods or rendered services which he has accepted, as would have followed if those goods or services had been supplied or rendered at the request of the Commission or of that party, as the case may be, apart from the contract and on terms that a reasonable payment would be made in respect thereof, and any payments by or to the Commission before the giving of the notice shall be adjusted accordingly. [1639]

(5) For the purposes of paragraph (c) of the last preceding subsection, a person who permits another to use or enjoy any property shall be deemed to render a service to him. [1640]

(6) So much of this section as relates to contracts does not apply to any lease, agreement for a lease, or other contract constituting any interest in land, and where any such interest is disclaimed by virtue of so much of this section as relates to the disclaimer of property, the provisions of the last preceding section shall have effect as if the said lease, agreement or other contract were not and had never been a relevant contract within the meaning

thereof, but without prejudice to the proviso to subsection (3) of this section. [1641]

*General note.*—As to the general effect of this section, see Preliminary Note, *ante*. The section may be compared with the Electricity Act, 1947, s. 18 (see title ELECTRICITY SUPPLY, *ante*), and the Coal Industry Nationalisation Act, 1946, s. 7 (39 Halsbury's Statutes 264).

As to the adjustment of compensation following the disclaimer of property, see s. 47 (7), *post*.

The possibility that any property or contracts may be disclaimed after the amount of compensation payable has been provisionally ascertained is not to affect the ascertainment of that amount (see s. 48 (1), *post*).

*Notice of acquisition.*—As to the duty of the Commission to give a notice of acquisition, see s. 39 (1), *ante*, as applied by ss. 42 (1), 43, *ante*; and see s. 54 (1), *post*. The notice must be served on the person carrying on the undertaking (see s. 40 (1), *ante*).

*Transferor.*—Namely, the person carrying on the undertaking (see s. 45 (1), *ante*).

*Date of transfer.*—See s. 44, *ante*.

*Relevant property; relevant contracts.*—As to the meaning of these expressions, see s. 45 (1), *ante*.

November 19, 1945.—It was explained by the Government spokesman during the Committee Stage of the Bill in the House of Lords that the reason for specifying this date was that it was the date on which the Lord President of the Council announced the Government's intention to nationalise the transport industry. He pointed out that all contracts made by an undertaking subsequent to that date were made in the light of the knowledge of the Government's intention (see 148 H. of L. Official Report 950).

"Not reasonably necessary . . . unreasonable imprudence."—The question whether the acquisition of any property or the making or variation of a contract was not reasonably necessary for the purposes of the undertaking or was an act of unreasonable imprudence will, in the event of dispute, be determined by the Transport Arbitration Tribunal (see s. 109 (1) (c), *post*).

*Definitions.*—For definitions of "liability" and "property," see s. 125 (1), *post*.

**47. Amount of compensation.**—(1) In respect of any goods vehicle vesting in the Commission by virtue of a notice of acquisition, the Commission shall pay to the transferor compensation equal to the cost, as at the date of transfer, of replacing the vehicle by a new vehicle of a similar type, adjusted, however—

- (a) in the case of a vehicle registered under the Roads Act, 1920, by deducting, where one or more complete years have elapsed between the date when the vehicle was so registered and the date of transfer, one-fifth of the said cost in respect of the first year and, in respect of each subsequent year, one-fifth of the said cost as reduced by the total deduction falling to be made in respect of the previous years; or
- (b) in the case of a trailer (other than a superimposed trailer) by deducting, where one or more complete years have elapsed between the date on which the vehicle was first put into use and the date of transfer, one-seventh of the said cost in respect of the first year and, in respect of each subsequent year, one-seventh of the said cost as reduced by the total deduction falling to be made in respect of the previous years; and
- (c) in either case, if it is established that the physical condition of the vehicle is materially better or worse at the date of transfer than the normal physical condition at that date of a vehicle of the same type and age, by adding to or deducting from the said cost, as reduced by the deductions, if any, falling to be made under paragraph (a) or paragraph (b) of this subsection, such amount as fairly represents the difference. [1642]

(2) In respect of any property vesting in the Commission by virtue of notice of acquisition, other than a goods vehicle, the Commission shall pay to the transferor compensation equal to the amount which the property would fetch if sold in the open market, estimated as at the date of transfer and as if this Act had not passed. [1643]

(3) In respect of the total or partial cessation of business caused to the transferor by the operation of a notice of acquisition, the Commission shall pay to the transferor such sum, if any, as may be just, being a sum calculated

by reference to the average net annual profit as defined in the Ninth Schedule to this Act, and being not less than twice nor more than five times the said average net annual profit.

In considering the proportion which the amount of the compensation is to bear to the average net annual profit as so defined, regard shall be had to the likelihood or otherwise that profits at the rate represented by the average net annual profit might, but for the operation of this Act, have been made after the date of transfer by carrying on the undertaking. [1644]

(4) Where—

- (a) the activities of an undertaking with respect to which a notice of acquisition is given consist, immediately before the date of transfer, partly of the operation of vehicles authorised to be used under A licences or B licences and partly of other activities; and
- (b) the undertaking, so far as it consists of those other activities or any of them, is carried on on or after the date of transfer; and
- (c) it appears that the proportion which the overhead expenses incurred in carrying on that undertaking bear to the total expenses incurred in carrying it on will be greater on or after the date of transfer than before that date by reason of the transfer to the Commission resulting from the notice of acquisition,

the Commission shall pay to the transferor such compensation in respect of severance as fairly represents the burden of that increase over the five years beginning with the date of transfer:

Provided that no increase in the said proportion shall be taken into account for the purposes of this subsection except in so far as it is shown by the transferor that the increase could not reasonably be avoided by him.

[1645]

(5) Where a hire purchase agreement is a relevant contract within the meaning of the preceding provisions of this Part of this Act relating to the effect of notices of acquisition and the effect of the notice of acquisition is to vest the rights of the hirer in the Commission, the Commission shall pay to the transferor the same compensation as would have fallen to be paid if the property which is the subject of the agreement had vested in the Commission, less the amount remaining to be paid under the agreement before the hirer can become the owner of the property:

Provided that in calculating the compensation payable under this subsection—

- (a) there shall be ascertained what sum out of the total amount paid or to be paid under the agreement represents the charge made by the owner of the property for the credit given under the agreement; and
- (b) the said amount remaining to be paid shall for the purposes of this subsection be deemed to be reduced by so much of the sum ascertained under paragraph (a) of this proviso as bears to the whole of that sum the same proportion that the part of the period by the expiration of which payment of the total amount due under the agreement must be completed falling after the date of transfer bears to the whole of that period. [1646]

(6) There shall be deducted from the total amount of compensation payable in respect of an undertaking under the preceding provisions of this section—

- (a) an amount equal to such part of any sums paid or payable by the Commission in or towards the discharge of any liability to which as the result of the transfer effected by the notice of acquisition

they have become subject in respect of any property or under any contract as, on a just apportionment, is referable to matters occurring before the date of transfer ;

- (b) an amount equal to such part of any sums received by the transferor before the date of transfer as consideration for the supply of goods or the rendering of services as, on a just apportionment, is referable to goods to be supplied or services to be rendered by the Commission after the date of transfer,

and there shall be added to the total amount of compensation payable in respect of an undertaking under the preceding provisions of this section an amount equal to such part of any sums paid by the transferor before the date of transfer as consideration for the supply of goods or the rendering of services as, on a just apportionment, is referable to goods to be supplied or services to be rendered to the Commission after the date of the transfer :

Provided that no deduction or addition shall be made under this subsection if and in so far as the matter in respect of which the deduction or addition would fall to be made has affected the compensation payable under subsection (2) of this section in respect of any property.

For the purposes of this subsection, a person who permits another to use or enjoy any property shall be deemed to render a service to him. [1647]

(7) Where the Commission have duly disclaimed any property, there shall be added to or subtracted from the total amount of the compensation payable in respect of an undertaking under this section the amount by which the value of the use or enjoyment of the property by the Commission during the period beginning with the date of transfer and ending with the date of the disclaimer exceeds or falls short of such part of the total sums paid or payable by the Commission in or towards the discharge of any liability to which they have become subject in respect of the property, as, on a just apportionment, is referable to the period beginning with the date of transfer. [1648]

(8) Save as aforesaid, and subject to any other express provision contained in this Act, no compensation shall be payable in respect of the transfer effected by a notice of acquisition. [1649]

*General effect of section.*—This section provides for the payment of compensation in respect of a transfer effected by a notice of acquisition under four heads : (i) goods vehicles transferred ; (ii) property other than goods vehicles transferred ; (iii) cessation of business ; and (iv) where applicable, severance.

Special provision is made to cover cases where property comprised in a notice of acquisition is subject to a hire purchase agreement, and for the making of deductions from or additions to the total amount of compensation payable in respect of an undertaking in special cases. See, generally, Preliminary Note, *ante*.

No sum may be paid by way of or on account of compensation under the section except in pursuance of an agreement confirmed by the Transport Arbitration Tribunal or of an order of that tribunal under s. 109, *post* ; exceptionally, however, confirmation by the tribunal is not required if the total amount of compensation payable under an agreement does not exceed £20,000 (see s. 108, *post*).

As to the settlement of disputes as to the sums is payable by way of compensation, see s. 109 (1), *post*. As to the powers of the arbitration tribunal where there is delay in settling compensation, see s. 110, *post*. The amount ultimately found due by way of compensation will carry interest ; see s. 48 (4), *post*. As to the payment of compensation for property subject to incumbrances, see s. 49, *post*.

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Notice of acquisition.*—As to the duty of the Commission to serve a notice of acquisition, see s. 39 (1), *ante*, as applied by ss. 42, 43, *ante* ; see also s. 54 (1), *post*. As to the general effect of a notice of acquisition, see s. 45, *ante*.

*Date of transfer.*—See s. 44, *ante*.

*Roads Act, 1920.*—19 Halsbury's Statutes 85.

*Transferor.*—Namely, the person carrying on the undertaking (see s. 45 (1), *ante*).

*Relevant contract.*—As to the meaning of this expression, see s. 45 (1), *ante*.

*Deductions from compensation.*—Deductions from compensation may also be made where the Commission suffer damage by reason of the contravention of the transferor's duty as to carrying on the undertaking until transfer, see s. 50 (2), *post*.

*Disclaimer of property.*—See s. 46, *ante*.

*Definitions.*—For definitions of " goods vehicle," " A licence," " B licence " and " trailer," see notes to s. 41, *ante* ; for " hire purchase agreement," " liability," " property " and " super-imposed trailer," see s. 125 (1), *post*.

**48. Date and mode of payment of compensation.**—(1) A provisional ascertainment of the total amount payable under the last preceding section with respect to an undertaking shall be made as soon as may be after the date of transfer, without regard to the possibility that the Commission may, after the date of the completion of the provisional ascertainment, disclaim any property or contract not disclaimed by them before the completion of the provisional ascertainment, and the Commission shall pay the amount provisionally ascertained to be payable, less such sum, not exceeding one-tenth of that amount, as the Commission may think fit to retain pending the final ascertainment of the total net amount payable. [1650]

(2) Where the amount paid under the preceding subsection is found to be less or more than the net amount falling to be paid under the last preceding section, the deficiency or excess shall be made good by or to the Commission. [1651]

(3) The amounts payable in accordance with the preceding provisions of this section by the Commission shall be satisfied, in the manner provided for by Part VI of this Act, by the issue of British transport stock :

Provided that where the amount payable to a person on any date does not exceed twenty thousand pounds, the person to whom it is to be paid may, by notice in writing to the Commission given within the prescribed time, require that the Commission shall satisfy the said amount or, if the said amount exceeds two thousand pounds, two thousand pounds thereof by a payment in cash, and the said amount shall, either wholly or to that extent, be satisfied accordingly. [1652]

(4) In addition to any sum payable under the last preceding section, the Commission shall be liable to pay interest on the amount ultimately found due to be paid by way of compensation, at such rates as the Treasury may determine, from the date of the transfer until—

(a) in the case of an amount satisfied by the issue of British transport stock, the date as from which interest on that stock begins to accrue ; and

(b) in any other case, the date of payment,

and the Commission may from time to time make payments on account of any interest which the Commission estimate will become payable under this subsection, and where any adjustment falls to be made for any overpayment or underpayment of compensation under the preceding provisions of this section, an adjustment shall also be made in respect of interest. [1653]

*General effect of section.*—See Preliminary Note, *ante*.

*Payment of compensation.*—No sum may be paid by way of or on account of compensation under this section except in pursuance of an agreement confirmed by the Transport Arbitration Tribunal, or of an order of that tribunal under s. 109, *post* ; exceptionally, however, the confirmation of the tribunal is not required where the total amount of compensation does not exceed £20,000 (see s. 108 (1), *post*).

Under s. 109, *post*, the tribunal have sole jurisdiction for determining any question, *inter alia*, as to what sum (if any) (i) is payable by way of compensation or interest thereon, and (ii) is repayable to the Commission in respect of an overpayment of compensation or of interest thereon. As to the powers of the arbitration tribunal where there is delay in the settlement of compensation, see s. 110, *post*.

*Date of transfer.*—See s. 44, *ante*.

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Disclaimer of property or contracts.*—See s. 46, *ante*.

*British Transport Stock.*—As to the issue of British Transport Stock, see s. 89, *post*.

*Definition.*—For definition of “ property,” see s. 125 (1), *post*.

**49. Compensation for property subject to incumbrances.**—(1) Where any property in respect of which compensation falls to be paid under the preceding provisions of this Part of this Act was, immediately before the date of transfer, subject to a mortgage or other like incumbrance (other than a floating charge which will attach to the compensation), so much of any payment of, or on account of, or by way of interest on, any compensation payable



in respect of the undertaking as is properly referable to that property shall be made to the incumbrancer :

Provided that—

- (a) this subsection shall not apply to any mortgage or other like incumbrance unless it is registered as a bill of sale or is registered under Part III of the Companies Act, 1929, or is registered under the Land Registration Act, 1925, or the Land Charges Act, 1925, or is a mortgage by deposit of title deeds or the Commission obtains possession of the property from the incumbrancer ;
- (b) if, at the time when the payment is made, the debt secured by a mortgage or other like incumbrance has been paid in full, the payment shall be made as if the property had not been subject to that mortgage or incumbrance ;
- (c) if the property was subject to two or more mortgages or other like incumbrances to which this subsection applies, the payment shall, subject to the provisions of the last preceding paragraph of this proviso, be made to the incumbrancer whose mortgage or other incumbrance has priority ; and
- (d) in any case this subsection shall have effect, as regards any mortgage or other like incumbrance to which this subsection applies, subject to any agreement between the incumbrancer and the person to whom apart from that mortgage or other incumbrance the payment would have fallen to be made. [1654]

(2) A payment made to an incumbrancer under subsection (1) of this section shall be treated for the purposes of subsection (3) of the last preceding section as a separate payment. [1655]

(3) Where a payment is made to an incumbrancer under subsection (1) of this section (whether satisfied by the issue of British transport stock or made in cash) the incumbrancer shall be liable to account as if the amount paid to him or the amount represented by the stock, as the case may be, had accrued to him as proceeds of sale of the property in question arising under a power of sale exercised by him immediately before the date of transfer ; and the incumbrancer shall be under the like obligation to obtain the full amount of any payment falling to be made to him under the said subsection (1) as he would have been had he been obtaining that amount by means of the exercise of such a power of sale. [1656]

(4) Any deduction from the total amount of any compensation payable in respect of an undertaking which falls to be made in respect of any sums paid by the Commission in or towards the discharge of any liability to which they have become subject or in respect of goods to be supplied or services to be rendered by the Commission or other similar matters shall, for the purpose of determining how much of any payment of, or on account of, compensation is to be treated for the purposes of this section as properly referable to any particular property, be dealt with as follows—

- (a) if the liability was incurred in respect of any property, it shall first be applied in reducing the compensation in respect of that property ;
- (b) any balance, or, if the liability was not in respect of property, the whole thereof, shall be applied first in reducing the compensation for cessation of business, the compensation for severance, and any addition to compensation in respect of goods to be supplied or services to be rendered to the Commission after the date of transfer or other similar matters, and so far as it cannot be so applied, apportioned rateably over the remainder of the compensation payable. [1657]



*Compensation under preceding provisions.*—See ss. 47, 48, *ante*.

*Date of transfer.*—See s. 44, *ante*.

*Payment of compensation properly referable to any particular property.*—Where any deduction is made from compensation as a result of the transferor's failing in his duty to carry on the undertaking in accordance with s. 50 (1), *infra*, that deduction is, for the purpose of determining how much of any payment of or on account of compensation is to be treated for the purposes of this section as properly referable to any particular property, to be dealt with as set out in s. 50 (3), *infra*.

*Companies Act, 1929, Part III.*—2 Halsbury's Statutes 822. Part III of the Act is slightly amended by the Companies Act, 1947 (10 & 11 Geo. 6, c. 47), s. 123 and Sched. IX, Part I.

*Land Registration Act, 1925.*—15 Halsbury's Statutes 434.

*Land Charges Act, 1925.*—15 Halsbury's Statutes 524.

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*British Transport Stock.*—See s. 48 (3), *ante*, and s. 89, *post*.

*Payment in cash.*—As to when compensation is payable in cash, see s. 48 (3), *proviso, ante*.

*Deductions from compensation.*—As to deductions from compensation in respect of sums paid by the Commission in or towards the discharge of any liability to which they have become subject or in respect of goods supplied or services rendered by the Commission, see s. 47 (6), *ante*.

*Definitions.*—For definitions of "liability," "mortgage or other like incumbrance," "incumbrancer" and "property," see s. 125 (1), *post*.

## 50. Duty of transferor as to carrying on undertaking until transfer.—

(1) Where notice of acquisition has been given with respect to an undertaking, the transferor shall, until the date of transfer or the date on which the notice is withdrawn or otherwise ceases to have effect, carry on the undertaking in the ordinary course of business and maintain it in as efficient condition as it was in before the giving of the notice, and shall not without the previous consent in writing of the Commission given either generally or specially (which he shall apply for if it is necessary for the purposes aforesaid)—

- (a) sell, dispose of or let or hire out for more than six months any land or vehicles held for the purposes of the undertaking; or
- (b) enter into a contract for the purposes of the undertaking extending for more than twelve months; or
- (c) undertake any new works estimated to cost more than five hundred pounds in all:

Provided that, where the activities of the undertaking in question consist partly of the operation of vehicles which are to vest in the Commission by virtue of the notice of acquisition and partly of other activities, this subsection shall not apply to transactions solely concerning such other activities.

[1658]

(2) Where the Commission suffer damage by reason of any contravention by the transferor of the provisions of subsection (1) of this section, the amount of the damage shall be deducted from the compensation payable in respect of the undertaking. [1659]

(3) Any deduction made under this section shall, for the purpose of determining how much of any payment of, or on account of, compensation is to be treated for the purposes of the last preceding section as properly referable to any particular property, be dealt with as follows—

- (a) if the damage was a diminution of the value to the Commission of any property, the deduction shall first be applied in reducing the compensation in respect of that property;
- (b) any balance of the deduction not so applied, or, if the damage was not such damage as aforesaid, the whole of the deduction, shall first be applied in reducing the compensation for cessation of business, the compensation for severance, and any addition to compensation in respect of goods to be supplied or services to be rendered to the Commission after the date of transfer, or other similar matters, and, so far as it cannot be so applied, shall be apportioned rateably over the remainder of the compensation payable. [1660]

*Notice of acquisition.*—As to the requirements for the giving of a notice of acquisition, see s. 39 (1), *ante*, as applied by ss. 42 (1), 43, *ante* (see also s. 54 (1), *post*).

*Transferor.*—Namely, the person carrying on the undertaking (see s. 45 (1), *ante*).

*Date of transfer.*—See s. 44, *ante*.

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Compensation payable in respect of an undertaking.*—As to the amount of this compensation, see s. 47, *ante*. Deductions from compensation may be made in addition to those provided for by sub-s. (2), *ante* (see s. 47 (6), (7), *ante*).

*Definitions.*—For definitions of “contravention” and “property,” see s. 125 (1), *post*.

**51. Information, etc.**—(1) The licensing authority for any area shall, on demand by the Commission, supply to the Commission any such information, obtained by the authority or any predecessor of his in his office either as such or as a Regional Transport Commissioner acting on behalf of the Minister, with respect to the nature of the business carried on by a person carrying on any undertaking as the Commission may reasonably require for the purpose of ascertaining whether or not the undertaking is one with respect to which the Commission are bound under the preceding provisions of this Part of this Act to serve a notice of acquisition.

Where any information is supplied by the licensing authority to the Commission with respect to the nature of the business carried on by any person, a statement that that information has been so supplied, together with full particulars thereof, shall be sent at the same time by that authority to that person. [1661]

(2) It shall be the duty of any persons who are carrying on or who have carried on any undertaking the activities of which consist in whole or in part of the operation of vehicles covered by A licences or B licences to produce and permit extracts to be made from and copies to be taken of such books of account, records and other documents and to provide such information as the Commission may reasonably require for the purpose of ascertaining whether or not the undertaking is one with respect to which the Commission are bound under the said provisions to serve a notice of acquisition, or for the purpose of ascertaining what compensation is payable under this Part of this Act in respect thereof. [1662]

(3) Where notice of acquisition has been given with respect to an undertaking, the person to whom it is given shall produce to the Commission and permit the Commission to make extracts from and take copies of such books of account, records and other documents, and shall supply to the Commission such information, as the Commission may reasonably require for the purpose of enabling them to take over easily and without interruption the business of the undertaking so far as it relates to the operation of the vehicles which will be affected by the notice, including, in particular, books of account, records or documents relating to, and information as to, the vehicles and other property which will be affected by the notice, the nature of the business carried on in connection with those vehicles and the persons employed in or in connection with that business :

Provided that a person shall not, by virtue of this subsection, be bound to produce or permit extracts to be made from or copies to be taken of any such books, records or documents or to give any such information until the expiration of the period prescribed for the giving by him of a notice requiring the withdrawal of the notice of acquisition, or, if within that period he has given such a notice, until it is determined that the notice of acquisition is to have effect. [1663]

(4) Where notice of acquisition is given with respect to an undertaking, the person to whom it is given shall preserve all books of account, records and other documents relating to the undertaking until they are handed over to the Commission or, if they are retained by him, until six months have elapsed after the date of transfer. [1664]

*Licensing authority.*—S. 125 (2), *post*, provides that, except in so far as the context otherwise requires, expressions used in this Part of the Act are to have the same meanings as in the Road and Rail Traffic Act, 1933.

S. 4 (1) of that Act (26 Halsbury's Statutes 876) defines the term "licensing authority" for the purposes of Part I of that Act as the person who is the chairman of the traffic commissioners for any traffic area within the meaning of the Road Traffic Act, 1930 (23 Halsbury's Statutes 607), including any person for the time being appointed by the Minister to act as deputy to the chairman; and sub-s. (2) of the same section provides that that section is to have effect as respects the metropolitan traffic area with the substitution of a reference to the traffic commissioner for that area for a reference to the chairman of the traffic commissioners.

The traffic commissioners for any area within the meaning of the Act of 1930 consist of a body of three persons appointed by the Minister (see the Road Traffic Act, 1930, s. 63; 23 Halsbury's Statutes 656).

The licensing authority for any area is, by s. 117, *post*, renamed "the Licensing Authority for Goods Vehicles."

*The Commission.*—The British Transport Commission (s. 1 (1), *ante*).

*Regional Transport Commissioner.*—By virtue of S. R. & O., 1940, Nos. 1518 and 1797, made under the Chartered and Other Bodies (Temporary Provisions) Act, 1939 (32 Halsbury's Statutes 1258), the Minister of War Transport was enabled during the war to appoint for any traffic area in place of the three traffic commissioners (see preceding note), a single Regional Transport Commissioner. These orders, however, were revoked with effect, so far as the appointment of Commissioners is concerned, from January 1, 1947, by S. R. & O., 1946, No. 1750.

*Notice of acquisition.*—As to the undertakings with respect to which the Commission are bound under the preceding provisions of this Part to serve a notice of acquisition, see s. 39 (1), *ante*, as applied by ss. 42 (1), 43, *ante*. As to arbitration thereon, see ss. 40, 41, *ante*.

The Commission are also bound to serve a notice of acquisition under s. 54 (1), *post*, where so required by a person carrying on an undertaking to which that section applies.

*Period prescribed for the giving of a notice.*—The period prescribed for the giving of a notice requiring the withdrawal of a notice of acquisition will be a period prescribed under regulations made by the Minister (see s. 40 (5), *ante*, and s. 119, *post*). No such regulations had been made up to the time of going to press.

*Date of transfer.*—See s. 44, *ante*.

*Definitions.*—For definitions of "A licence" and "B licence," see notes to s. 41, *ante*; for "the Minister," see s. 125 (1), *post*.

### *Restrictions on Carriage of Goods for Hire or Reward otherwise than by Commission*

#### **52. Additional restrictions on carriage of goods for hire and reward.**—

(1) On and after the appointed day, it shall be a condition of every A licence and every B licence that, except under and in accordance with a permit granted by the Commission, goods shall not be carried for hire or reward in any authorised vehicle if the vehicle, at any time while the goods are being so carried, is more than twenty-five miles from its operating centre, and the Road and Rail Traffic Act, 1933, shall have effect as if the said condition were included among the conditions specified in subsection (1) of section eight of that Act :

Provided that the said condition shall not apply where—

- (a) the goods carried are liquids carried in bulk in a tank permanently fixed to the vehicle, or in a tank not so fixed of which the capacity is not less than five hundred gallons, or are goods of a special character which, under any statutory provision specifically relating thereto, may only be carried in a vehicle constructed or adapted so as to comply with the requirements of that provision and which are being so carried, or the carriage is an ordinary furniture removal, or the goods carried are meat or livestock ; or
- (b) the goods carried consist of felled timber which is being carried in a vehicle specially constructed for the purposes of such carriage ; or
- (c) the vehicle is a vehicle specially constructed to carry abnormal indivisible loads or the goods carried are apparatus or equipment ancillary to the operation, for the purposes of the carriage of such loads, of such a vehicle ; or
- (d) a notice of acquisition has been served with respect to the undertaking for the purposes of which the vehicle is being used and has

not been withdrawn or declared to be of no effect, and, if that notice has effect, the vehicle will, by virtue of the notice, be transferred to the Commission. [1665]

(2) The Commission shall have full power in their discretion either to grant or to refuse any such permit as aforesaid, and any such permit may be granted by them for such period and subject to such conditions as they think fit, and they may at any time, by notice in writing to the holder of the permit, revoke, suspend or vary the permit :

Provided that the Commission shall, in exercising their discretion, take into consideration the needs of, and any special circumstances affecting, the locality in which is situated the operating centre of any vehicle to which the permit would relate. [1666]

(3) The provisions of this section shall have effect in relation to every A or B licence whether granted before or after the passing of this Act, and whether or not the condition provided for by this section is expressed in the licence. [1667]

(4) The preceding provisions of this section shall, in the case of a B licence, be without prejudice—

(a) to the power of the licensing authority to impose, under subsection (3) of section eight of the Road and Rail Traffic Act, 1933, conditions which provide for restrictions additional to those provided for by the condition specified in subsection (1) of this section ; and

(b) to any condition imposed under the said power before the appointed day. [1668]

(5) It shall not be necessary for any such permit as aforesaid to be so framed as to apply only in relation to a particular licence, and more than one such permit as aforesaid may be granted to the same person. [1669]

*General note.*—The provisions of this section are designed to place the Commission in a position to co-ordinate the long distance carriage of goods by road for hire or reward with the carriage of goods by rail.

As from the appointed day it is made a condition of every A and B licence that, except in accordance with a permit from the Commission, goods shall not be carried for hire or reward in any authorised vehicle if at any time during the journey that vehicle is more than twenty-five miles from its operating centre. This condition will not, however, apply to those special classes of goods which are excepted from "ordinary long distance carriage" (see s. 39 (2), proviso). Where it applies, the condition will have effect in relation to A and B licences whether granted before or after the passing of the Act, and will be without prejudice both to the power of the licensing authority under the Road and Rail Traffic Act, 1933, s. 8 (3) (26 Halsbury's Statutes 880), to impose conditions providing additional restrictions and to any such conditions imposed before the appointed day.

The Commission are given full discretion as to the granting, revocation, suspension and variation of permits, but, chiefly to protect the interests of sparsely populated areas such as the crofter counties where a twenty-five mile limit could not be made an economic proposition, it is provided that in exercising that discretion they are to take into consideration the needs and special circumstances of the locality concerned.

Permits may be revoked or suspended by the licensing authority for the purposes of the Road and Rail Traffic Act, 1933, Part I (26 Halsbury's Statutes 872-901) (now the Licensing Authority for Goods Vehicles; see s. 117, *post*, and note to s. 51, *ante*), for the breach of any condition or limitation imposed thereon (see s. 60 (1), *post*). See, generally, Preliminary Note, *ante*.

The carriage which is restricted under this section may be compared and contrasted with ordinary long distance carriage as defined by s. 39 (2), *ante*. The carriage of goods in a vehicle which does not go more than twenty-five miles from its operating centre is excluded both from the restrictions imposed by this section and from ordinary long distance carriage. In addition, the carriage of those special classes of goods which by provisos (a) to (c) to sub-s. (1), *ante*, is excluded from the said restrictions is also excluded from ordinary long distance carriage (see the proviso to s. 39 (2), *ante*). On the other hand, while any journey for a distance of less than forty miles (even though the vehicle goes beyond the twenty-five mile limit) is excluded from ordinary long distance carriage, there is no exemption for such a journey from the restrictions imposed by this section.

*Appointed day.*—As to the meaning of this expression, see s. 125 (3), *post*. No day had been appointed for the purpose of this section up to the time of going to press.

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Road and Rail Traffic Act, 1933, s. 8 (1), (3).*—26 Halsbury's Statutes 880.

*Permit.*—Replying to a question as to what criteria the Commission would apply in deciding whether or not to issue a permit, the Parliamentary Secretary to the Ministry of Transport stated on the Committee Stage of the Bill: "The criteria would be that the Commission

would say that they would carry out the particular haulage service if that service fitted in with their organisation, and if they could do that service at least as well as it is being done at the moment. Only when those two conditions were fulfilled would the Commission replace the haulier." He added that a permit would normally last for the same period as the vehicle licence. In the early stages while the organisation was being built up the Commission would undoubtedly allow a very large number of permits, but these would be reduced as the organisation developed (H. of C. Official Report, S.C.B., March 19, 1947, cols. 947, 955). The forms to be used, the particulars to be furnished, the procedure to be adopted and other minor matters connected with application for and issue of permits will be prescribed by regulations (see s. 61, *post*).

*Twenty-five miles.*—The area within which goods may be carried for hire or reward without a permit is equivalent to approximately 1,960 square miles.

*Sub-s. (1), proviso.*—With the exception of para. (d), this proviso is on the same terms as the proviso to s. 39 (1), *ante*, which sets out the special classes of goods the carriage of which is excluded from ordinary long distance carriage.

*Goods of a special character.*—As to goods of a special character which under any statutory provision specifically relating thereto may only be carried in a specially constructed or adapted vehicle, take for example, petroleum spirit the conveyance of which by road is governed by the Petroleum (Consolidation) Act, 1928, s. 6 (13 Halsbury's Statutes 1173) and the regulations made thereunder.

*Passing of this Act.*—August 6, 1947.

*Definitions.*—For definitions of "goods," "A licence," "B licence," see notes to s. 41, *ante*; for "abnormal indivisible load," "operating centre," "ordinary furniture removal" and "statutory provision," see s. 125 (1), *post*.

### 53. Protection for certain existing undertakings with A or B licences.—

(1) The provisions of this and the two next succeeding sections shall have effect for the protection of persons (in this section referred to as "persons to whom this section applies") who, on the twenty-eighth day of November, nineteen hundred and forty-six, were carrying on undertakings the activities whereof consisted of or included the carrying of goods in goods vehicles for hire or reward and were in connection with those undertakings the holders of A licences or B licences:

Provided that where, by virtue of an agreement between the Commission and the person carrying on an undertaking, the Commission either do not give a notice of acquisition with respect to that undertaking which it would have been their duty to give but for the agreement, or withdraw a notice of acquisition given in accordance with their duty, the said provisions shall have effect subject to such modifications, if any, as may be specified in the agreement. [1670]

(2) If, before the expiration of the prescribed time after the appointed day, a person to whom this section applies duly applies to the Commission for a permit under the last preceding section, being a permit applying only to vehicles having a single specified operating centre, then, until the prescribed period has elapsed after the application has been dealt with by the Commission, the condition provided for by subsection (1) of that section shall not operate so as to prevent the doing of anything which could lawfully have been done if a permit had been granted in all respects in accordance with the application:

Provided that where before the expiration of the time prescribed as aforesaid a notice of acquisition is served with respect to the undertaking of a person to whom this section applies without any such application for a permit having previously been made by him, the said prescribed time shall, instead of beginning to run from the appointed day, begin to run from the date on which that person, in accordance with the provisions of this Part of this Act in that behalf, requires the Commission to withdraw the notice of acquisition.

More than one permit may be applied for by the same person under this subsection. [1671]

(3) Any permit granted on any such application (in this and the next succeeding section referred to as "an original permit") shall be so framed as to apply in relation to all vehicles having the same operating centre which are authorised to be used under any A licences or B licences held by the person in question on the said twenty-eighth day of November, and shall

be so framed as to continue in force, unless previously revoked or suspended under the subsequent provisions of this section, so long as any of those licences continue in force.

If such a licence as aforesaid expires or ceases to have effect and a new licence is granted in substitution therefor either—

- (a) to the same person ; or
- (b) if the occasion of the substitution is such an assignment as is hereafter mentioned in this section, to the assignee,

the new licence and the old licence shall be treated for the purposes of this subsection as one and the same licence, and so on as respects any similar subsequent substitution. [1672]

(4) An original permit may be revoked or suspended by the licensing authority for the area in which the operating centre in question is situate if, on an application made to him by the Commission, he is satisfied that the holder of the permit has been guilty of a serious breach of any condition attached to the permit or to any licence of which he was the holder.

In any case where a permit is revoked or suspended under this subsection, the licensing authority shall, if requested by the holder of the permit, state in writing the grounds of the revocation or suspension. [1673]

(5) An original permit may also be revoked by the Commission—

- (a) at the expiry of the period of one year from the date of the granting thereof, by notice in writing given by the Commission to the holder at least one month before that period expires ; or
- (b) if the permit is not revoked at the expiry of that period, then at the end of any triennium, by notice in writing given by the Commission to the holder at least six months before the end of that triennium.

In this subsection, the expression “ triennium ” means, in relation to a permit, a period of three years beginning one year after the date on which the permit was granted or beginning at the end of a previous triennium. [1674]

(6) Where the Commission give notice under the last preceding subsection of the revocation of an original permit, they shall state in the notice whether or not they are willing to grant in lieu of that permit another permit complying with the requirements of subsection (3) of this section, and, if so, what will be the terms thereof.

A permit granted in accordance with any such statement is hereafter in this section, and in the next succeeding section, referred to as “ a substituted permit ”, and the provisions of this subsection and of subsections (3), (4) and (5) of this section shall apply in relation to it as they apply in relation to an original permit :

Provided that paragraph (a) of the said subsection (5) shall not apply to a substituted permit and the definition in that section of the expression “ triennium ” shall, in relation to a substituted permit, have effect as if for the words “ beginning one year after the date ” there were substituted the words “ beginning with the date ”. [1675]

(7) Where a person to whom this section applies assigns the whole or any part of his undertaking to another such person who is the holder of an original permit or a substituted permit, any original or substituted permit held by the assignor for the purposes of his undertaking or that part of his undertaking, as the case may be, may be assigned by him to the said other person, and, if it is so assigned, then, as from the date on which notice in writing of the assignment is given to the Commission—

- (a) the permit shall have effect as if any reference therein to the assignor were a reference to the assignee ; and



- (b) the provisions of this and the next succeeding section shall have effect in relation to the permit as if the undertaking or the assigned part thereof, as the case may be, had at all material times been carried on by the assignee. [1676]

*General note.*—This section, together with ss. 54, 55, *post*, is designed to give protection against the effect of the restrictions imposed by s. 52, *ante*, to persons who were carrying on haulage undertakings on November 28, 1946.

Subject to any modifications having effect by virtue of the proviso to sub-s. (1), the section in effect provides that if such a person, in a case where either notice of acquisition has not been served, or, if served, has been required to be withdrawn, applies within a prescribed time for a permit under s. 52, *ante*, he may, until a prescribed time has elapsed after the application has been dealt with, treat the application as having been granted.

Any permit so granted (referred to as "an original permit") will normally last, in the first instance, for one year and thereafter, if not revoked, for successive periods of three years.

The Commission are empowered on the revocation of an original permit to grant a substituted permit which will normally last for successive periods of three years.

November 28, 1946.—This is the day immediately following the First Reading of the Bill in the House of Commons.

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Agreement not to give a notice of acquisition or withdrawal of a notice.*—See s. 39 (1), proviso, *ante*.

*Prescribed time.*—This means prescribed under regulations made by the Minister (see s. 119, *post*). No such regulations had been made up to the time of going to press.

*Appointed day.*—As to the meaning of this expression, see s. 125 (3), *post*. No day had been appointed for the purposes of this section up to the time of going to press.

*Person to whom this section applies.*—See sub-s. (1), *ante*.

*Notice of acquisition.*—As to when the Commission are bound or entitled to serve a notice of acquisition, see s. 39 (1), *ante*, as applied by ss. 42 (1), 43, *ante*. As to the circumstances in which a person may require the withdrawal of a notice of acquisition, see s. 40 (2), *ante*.

*Licensing authority.*—As to the meaning of this term, see note to s. 51, *ante*. As to appeals to the Transport Tribunal by a person aggrieved by the revocation or suspension of a permit by the licensing authority, see s. 56 (1), *post*.

*Definitions.*—For definitions of "goods," "goods vehicles," "A licence" and "B licence," see notes to s. 41, *ante*; as to "operating centre," see s. 125 (1), *post*.

#### 54. Right to require notice of acquisition to be given.—(1) If—

- (a) the Commission—

- (i) refuse to grant an original permit; or
- (ii) impose on an original permit limitations or conditions other than those specified in the application for the permit; or
- (iii) give notice under subsection (5) of the last preceding section of the revocation of an original permit or a substituted permit; and

- (b) the effect of the refusal, the effect of the imposition of the limitations or conditions or, due regard being had to any substituted permit which the Commission are willing to grant, the effect of the revocation, will involve substantial interference with the carrying on by the applicant for or holder of the permit of some activity which was, before the twenty-eighth day of November, nineteen hundred and forty-six, being carried on by him or by his predecessors in, or in any part of, his undertaking, and has, up to the time of the refusal, the imposition of limitations or conditions or the revocation, as the case may be, continued to be so carried on, with only such intermissions, if any, as are incidental to the nature of the activity,

he may, within the prescribed time, serve on the Commission a notice requiring the Commission to serve on him notice of acquisition with respect to his undertaking, and the Commission shall serve on him such a notice accordingly and, subject to the provisions of the next succeeding subsection, the like consequences shall ensue as if it were a notice served by them under the preceding provisions of this Part of this Act. [1677]

(2) A person who serves a notice on the Commission under the preceding subsection may, if he thinks fit, by his notice require that the Commission's notice of acquisition shall be limited in terms to such goods vehicles, being



vehicles authorised to be used under A licences or B licences, as may be specified in his notice, to such hire purchase agreements, being agreements relating to goods vehicles authorised to be used under A licences or B licences, as may be so specified, and to such other property and contracts, being property and contracts directly relating to the operation of vehicles authorised to be used under A licences or B licences, as may be so specified ; and where a notice of acquisition is so limited in pursuance of this subsection—

- (a) the notice of acquisition shall not affect any other property or any other contracts ; and
- (b) the compensation payable in respect of cessation of business and severance shall, instead of being calculated in accordance with the preceding provisions of this Part of this Act, be calculated in accordance with the provisions of the next succeeding section.

[1678]

(3) A notice served by a person on the Commission under subsection (1) of this section requiring that a notice of acquisition shall be limited to specified vehicles, hire purchase agreements, property or contracts shall not be invalid on the ground that the vehicles, agreements, property or contracts do not fall within the descriptions set out in subsection (2) of this section or are not relevant property or relevant contracts as defined for the purposes of the preceding provisions of this Part of this Act relating to the effects of notices of acquisition, and the Commission's notice of acquisition shall embody in terms the limitations asked for, but where such a limitation is embodied in a notice of acquisition—

- (a) the notice shall be ineffective in relation to any vehicles, agreements, property or contracts which do not fall within the said descriptions or are not relevant property or relevant contracts as so defined ; and
- (b) the fact that particular vehicles, agreements, property or contracts are mentioned in the limitation shall not prejudice any right of the Commission to disclaim any of them. [1679]

(4) Where a notice of acquisition has been served by the Commission in respect of an undertaking otherwise than in pursuance of this section, subsection (2) of this section shall not apply in relation to the person carrying on that undertaking unless that notice of acquisition has been withdrawn or declared to be of no effect. [1680]

(5) Any question as to whether the conditions specified in subsection (1) of this section are or are not satisfied, or as to the extent to which a notice of acquisition is ineffective by reason of the provisions of subsection (3) of this section, shall, in default of agreement, be determined by the arbitration tribunal established under Part VIII of this Act. [1681]

*General note.*—This section is the second of three sections (ss. 53–55) designed to protect persons carrying on existing road haulage undertakings.

Under the present section, it is provided, *inter alia*, that if an activity which has been regularly carried on by such an undertaking will be substantially interfered with as a result of the refusal or revocation of an original permit (see s. 53, *ante*), the Commission may be required to serve a notice of acquisition with respect to the undertaking and the like consequences will ensue as if it were a notice served under s. 39, *ante*.

Such a notice may, if the person carrying on the undertaking requires and provided no notice of acquisition given under s. 39, *ante*, is outstanding in respect of the undertaking, be limited in terms to specified A and B licence vehicles and to property and contracts directly relating to their operation. Where a notice of acquisition is so limited, the compensation payable in respect of cessation of business and severance is, instead of being calculated in accordance with ss. 47 (3), (4), 49 (4) (b), *ante*, to be calculated in accordance with s. 55, *post*.

Analogous protection to that provided by this section is, in corresponding circumstances, provided under harbour schemes to persons carrying on existing port facility undertakings (s. 68 ; see title HARBOURS, DOCKS AND WHARVES, *ante*).

Compare also the provision, which in accordance with s. 64 (4), *post*, is to be included in road passenger transport schemes, for compensating persons carrying on road passenger transport undertakings existing at the time of the passing of the Act.

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Original permit ; substituted permit.*—As to the meaning of these terms, see s. 53 (3), (6), *ante*.

*Notice of acquisition.*—As to the general effect of a notice of acquisition, see s. 45, *ante*.

*Cessation of business ; severance.*—As to the calculation of compensation for cessation of business and severance under the preceding provisions of this Part of the Act, see ss. 47 (3), (4), 49 (4) (b), *ante*.

*Relevant property ; relevant contracts.*—As to the meaning of these terms, see s. 45 (1), *ante*.

*Right to disclaim.*—As to disclaimer of property and contracts by the Commission, see s. 46, *ante*.

*Arbitration Tribunal.*—The Transport Arbitration Tribunal (see s. 105 (1), *post*).

*Definitions.*—For definitions of "goods vehicles," "A licence" and "B licence," see notes to s. 41, *ante* ; for "hire purchase agreements" and "property," see s. 125 (1), *post*.

**55. Measure of compensation for cessation of business and severance in certain cases.**—(1) Where a notice of acquisition served under subsection (1) of the last preceding section is limited in pursuance of subsection (2) of that section to specified goods vehicles, hire purchase agreements, property and contracts, the amount, if any, payable by way of compensation in respect of cessation of business and severance shall be ascertained in accordance with the subsequent provisions of this section. [1682]

(2) No compensation shall be payable in respect of cessation of business or severance unless the transferor satisfies the Commission, or, in case of dispute, the arbitration tribunal established under Part VIII of this Act, that one or more of the vehicles to which, or to hire purchase agreements relating to which, the notice of acquisition is limited were, during the twelve months immediately preceding the service of the notice of acquisition—

- (a) used wholly or partly for the carriage of goods in such circumstances that a permit was necessary for the carriage, or that a permit would have been necessary if the appointed day for the purposes of section fifty-two of this Act had fallen before the beginning of the said twelve months (such carriage being hereafter in this section referred to as "long distance work"); and
- (b) customarily selected for use on the occasions during the said twelve months when vehicles were required for or in connection with long distance work.

A vehicle as to which the Commission or, as the case may be, the arbitration tribunal, are satisfied as aforesaid is hereafter in this section referred to as an "approved vehicle". [1683]

(3) The subsequent provisions of this section shall have effect in respect of each severally of such of the following classes of goods vehicles as include one or more approved vehicles (hereafter in this section severally referred to as "the relevant class") that is to say—

- (a) trailers, other than superimposed trailers ; and
- (b) other goods vehicles,

being in each case all goods vehicles of the relevant class, whether vehicles to which, or to hire purchase agreements relating to which, the notice of acquisition is limited or not, authorised to be used under A licences or B licences and operated by the transferor during the said twelve months. [1684]

(4) There shall be estimated to the satisfaction of the Commission or, in case of dispute, the arbitration tribunal,—

- (a) how much of the total work done by all vehicles of the relevant class during the said twelve months was, on a just apportionment, referable to long distance work ; and
- (b) the minimum total carrying capacity in tons which would have been employed on the work so found referable, if one or more vehicles of the relevant class had been used exclusively for such work during the said twelve months. [1685]

(5) The Commission shall pay to the transferor by way of combined compensation in respect of the cessation of business caused to him by the operation of the notice of acquisition and in respect of severance a sum calculated at the rate of seventy pounds for each complete ton of either—

- (a) the carrying capacity in tons or, as the case may be, the combined carrying capacity in tons of the approved vehicle or approved vehicles of the relevant class ; or
- (b) the minimum total carrying capacity in tons estimated in relation to the relevant class under paragraph (b) of the last preceding subsection,

whichever is the less. [1686]

(6) For the purposes of paragraph (a) of the last preceding subsection, “carrying capacity”, in relation to an approved vehicle, means—

- (a) in the case of a trailer (other than a superimposed trailer), the gross permitted weight of the vehicle less the weight of the vehicle unladen ; or
- (b) in the case of any other vehicle, the gross permitted weight of the vehicle less the sum of the following weights, that is to say—
  - (i) the unladen weight of the vehicle, as defined in section twenty-six of the Road Traffic Act, 1930, and
  - (ii) the weight of any container which is normally carried on the vehicle but is not permanently fixed thereto, and
  - (iii) a weight of five hundred pounds :

Provided that a superimposed trailer and the vehicle that draws it shall, for the purpose of calculating the carrying capacity of approved vehicles, be deemed to be one vehicle. [1687]

(7) In the last preceding subsection, “gross permitted weight” means, in relation to any vehicle, the gross laden weight of the vehicle stated by the manufacturer as at the date when the vehicle was first sold by him :

Provided that—

- (i) where the gross laden weight stated by the manufacturer is variable according to the size of the tyres with which the vehicle may be equipped, the gross permitted weight shall be determined by reference to the size of the tyres with which the vehicle is equipped at the date of transfer, so, however, as not in any case to exceed the maximum gross laden weight of that vehicle stated by the manufacturer ;
- (ii) where, subsequent to sale by the manufacturer, alterations have been made to a vehicle, and the transferor claims that by reason of the alterations the carrying capacity of the vehicle has been increased, the gross permitted weight shall be taken as such weight as the Commission and the transferor may agree, or, in default of agreement, such weight as may be determined by a certifying officer appointed under section sixty-nine of the Road Traffic Act, 1930, or such other person as may be designated by the Minister in that behalf, after consultation with the manufacturer of the vehicle or, where for any reason the manufacturer is not available, after consultation with a person appointed for the purpose by the Society of Motor Manufacturers and Traders ;
- (iii) where for any reason no statement by the manufacturer as to the gross laden weight of the vehicle has been or can be obtained, the gross permitted weight shall be taken as such weight as the Commission and the transferor may agree, or, in default of agreement, such weight as may be determined by a certifying officer appointed under section sixty-nine of the Road Traffic Act,

1930, or such other person as may be designated by the Minister in that behalf, after consultation with a person appointed for the purpose by the Society of Motor Manufacturers and Traders. [1688]

*General note.*—This is the third of three sections (ss. 53–55) designed to protect persons carrying on existing haulage undertakings. The present section contains the provisions according to which compensation for cessation of business and severance is to be ascertained where a notice of acquisition given under s. 54, *ante*, is limited in pursuance of sub-s. (2) of that section.

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Arbitration Tribunal.*—The Transport Arbitration Tribunal (see s. 105 (1), *post*).

*Transferor.*—Namely, the person carrying on the undertaking (see s. 45 (1), *ante*).

*Road Traffic Act, 1930, s. 26.*—23 Halsbury's Statutes 631. The unladen weight of a vehicle is defined by that section as the weight of the vehicle inclusive of the body and all parts (the heavier being taken where alternative bodies or parts are used) which are necessary to or ordinarily used with the vehicle when working on a road, but exclusive of the weight of water, fuel or accumulations used for the purpose of the supply of power for the propulsion of the vehicle, and of loose tools and loose equipment.

*Date of transfer.*—See s. 44, *ante*.

*Road Traffic Act, 1930, s. 69.*—23 Halsbury's Statutes 660.

*Definitions.*—For definitions of "goods vehicles," "carriage of goods," "A licence," "B licence" and "trailer," see notes to s. 41, *ante*; for "hire purchase agreements," "property" and "superimposed trailer," see s. 125 (1), *post*.

### Miscellaneous

**56. Appeals from decisions of licensing authorities.**—(1) Any person who, being the holder of a permit granted by the Commission, is aggrieved by the revocation or suspension thereof by the licensing authority may, within the prescribed time and in the prescribed manner, appeal to the Transport Tribunal. [1689]

(2) The Commission, if they are aggrieved by the refusal of a licensing authority to revoke or suspend a permit granted by the Commission, may, within the prescribed time and in the prescribed manner, appeal to the Transport Tribunal. [1690]

(3) The provisions of subsections (10), (11), (13) and (14) of section fifteen of the Road and Rail Traffic Act, 1933, shall apply in relation to any appeal under this section as they apply in relation to the appeals mentioned in the said section fifteen. [1691]

(4) In relation to any appeal brought before the day which is the appointed day for the purposes of the provisions of Part V of this Act relating to the transfer to the Transport Tribunal of jurisdiction under the said section fifteen, the preceding provisions of this section shall have effect subject to the following modifications:—

(a) for the references in subsections (1) and (2) to the Transport Tribunal there shall be substituted references to the Tribunal mentioned in the said section fifteen; and

(b) subsection (3) shall not apply but the provisions of the said section fifteen and of any rules made thereunder, and the said provisions of Part V of this Act, shall apply in relation to the appeals as they apply in relation to the appeals mentioned in the said section fifteen. [1692]

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Revocation or suspension of a permit by the licensing authority.*—See s. 60 (1), *post*, and the Road and Rail Traffic Act, 1933, s. 13 (26 Halsbury's Statutes 884).

*Licensing authority.*—As to the meaning of this term, see note to s. 51, *ante*.

*Prescribed time and manner.*—This means the time and manner prescribed under regulations made by the Minister of Transport (see s. 119, *post*). No such regulations had been made up to the time of going to press. See also ss. 61 and 120, *post*.

*Transport Tribunal.*—The tribunal formerly known as the Railway Rates Tribunal (see ss. 72 (1) and 125 (1), *post*).

*Road and Rail Traffic Act, 1933, s. 15.*—26 Halsbury's Statutes 885. As from the appointed day that section is amended by ss. 73 (2), 123 (2) (c) and Sched. XV, Part III, *post*, and the jurisdiction of the Appeal Tribunal constituted under the said s. 15 is transferred to the Transport Tribunal (see s. 73 (1), *post*).

### 57. Licensing authorities to act under general direction of Minister.—

(1) So much of subsection (1) of section sixty-three of the Road Traffic Act, 1930, as provides that licensing authorities for public service vehicles shall act under the general directions of the Minister, shall apply in relation to licensing authorities for goods vehicles as it applies in relation to the first-mentioned licensing authority. [1693]

(2) Where a direction has been given by the Minister to a licensing authority under any power of the Minister in that behalf, the Transport Tribunal shall not, on any appeal brought by virtue of the last preceding section, require the authority to do anything which would be inconsistent with the direction. [1694]

*Road Traffic Act, 1930, s. 63 (1).—*23 Halsbury's Statutes 656.

*Licensing authorities for public service vehicles.*—These are the Traffic Commissioners appointed for traffic areas under the Road Traffic Act, 1930, Part IV (23 Halsbury's Statutes 654) (see s. 117, *post*).

*Licensing authorities for goods vehicles.*—These are the licensing authorities for the purposes of the Road and Rail Traffic Act, 1933, Part I (26 Halsbury's Statutes 872) (see note to s. 51, *ante*, on the words "Licensing authority"; and see also s. 117, *post*).

*Transport Tribunal.*—The tribunal formerly known as the Railway Rates Tribunal (see ss. 72 (1) and 125 (1), *post*).

*Definitions.*—For definition of "goods vehicles," see notes to s. 41, *ante*; for "the Minister," see s. 125 (1), *post*.

**58. Meaning of "operating centre," in relation to vehicles covered by A or B licences.**—(1) Subject to the provisions of this section, in this Part of this Act, the expression "operating centre" means, in relation to a vehicle authorised to be used under an A licence or a B licence, the premises specified in the application for the licence as the permanent base or centre from which it is intended that the vehicle will normally be used for the purpose of carrying goods for hire or reward. [1695]

(2) Where, in the year nineteen hundred and forty-six, a vehicle was authorised to be used under a B licence, but subject to the condition that it should be used for the carriage of goods for hire or reward only in a district limited by reference to the distance of the boundaries thereof from a specified point, any reference to the operating centre of the vehicle, being a reference in relation to the facts of that year, shall be construed as a reference to that point. [1696]

(3) On an application after the passing of this Act for an A licence or a B licence, the applicant may, if he thinks fit, request the licensing authority to whom the application is made to specify a point in the area of the authority which is to be treated as the operating centre of the authorised vehicles, and where such a request is made, the licensing authority may, if he thinks fit, specify as the operating centre for all or any of the authorised vehicles any such point in his area as he thinks fit. [1697]

(4) Where an A licence or a B licence is in force at the passing of this Act, the holder of the licence may, within the prescribed time, make such a request as is specified in subsection (3) of this section to the licensing authority by whom the licence was granted, and that subsection shall, with the necessary modifications, apply accordingly. [1698]

(5) Where an A licence or a B licence was granted before the twenty-eighth day of November, nineteen hundred and forty-six, and, immediately before that date, the premises from which any vehicle, being an authorised vehicle, was in fact normally used for the purpose of carrying goods for hire or reward were different from the premises specified in the application for the licence, the holder of the licence may, within the prescribed time, give notice in writing in the prescribed form specifying the premises from which the vehicle was normally so used immediately before that date to the licensing authority within whose area the last-mentioned premises are situate and, if those premises are not situate within the area of the licensing authority by whom

the licence was granted, to that licensing authority, and if the first-mentioned licensing authority is satisfied that the vehicle was normally so used from those premises immediately before that date, that authority shall notify the holder accordingly, and those premises shall, as from the date when that authority so notifies the holder, be taken to be the operating centre of the vehicle :

Provided that a notice given by the holder of a licence under this subsection may embody such a request to the first-mentioned licensing authority as is mentioned in subsection (3) of this section, and, where such a request is made, that licensing authority may, if he thinks fit, specify as the operating centre for the vehicle any such point in his area as he thinks fit. [1699]

(6) The Minister may by regulations make provision whereby the operating centre of a vehicle may, on the application of the holder of the licence, be changed, either temporarily or otherwise, during the currency of a licence under which it is authorised to be used. [1700]

*General note.*—As to the meaning of “operating centre” in relation to a vehicle used without a licence in pursuance of an authority given under Defence Regulations, see s. 62, *post*.

*Passing of this Act.*—August 6, 1947.

*Licensing authority.*—As to the meaning of this expression, see note to s. 51, *ante*.

*Prescribed time; prescribed form.*—This means in the time and form prescribed under regulations made by the Minister of Transport (see s. 119, *post*). No such regulations had been made up to the time of going to press.

*Regulations.*—As to regulations, see ss. 61, 119, 120, *post*.

*Definitions.*—For definitions of “carriage of goods,” “goods,” “A licence” and “B licence,” see notes to s. 41, *ante*; for “the Minister,” see s. 125 (1), *post*.

### 59. Application of Road and Rail Traffic Act, 1933, to Commission.—

Section one of the Road and Rail Traffic Act, 1933 (which prohibits the use of goods vehicles in certain cases without a licence) shall not apply to the Commission but, as respects the matters specified in paragraphs (a) to (d) of subsection (1) of section eight and in subsection (1) of section sixteen of that Act (which relate to the condition of vehicles, their speeds and loads, intervals for rest and the keeping of records), the Commission shall have the same duties and be subject to the same liabilities, including liabilities to penalties, as they would if the said section one applied and they were the holders of A licences or B licences with respect to all goods vehicles owned by them or in their possession, and the provisions of Part I of that Act shall have effect accordingly :

Provided that—

- (a) subsection (3) of the said section sixteen (which provides for dispensations from observance of the regulations as to records and other matters) shall not apply, but the Minister may dispense with the observance by the Commission of any requirement of the regulations made under that section and may grant such a dispensation either generally or as respects any particular vehicles or as respects the use of vehicles for any particular purpose ;
- (b) subsection (4) of the said section sixteen (which relates to the preservation and production of records) shall have effect as if any reference therein to the licensing authority were a reference to the Minister. [1701]

*General note.*—The principal effect of this section is to exempt the Commission from the need to obtain a public carriers' licence under the Road and Rail Traffic Act, 1933, s. 2 (26 Halsbury's Statutes 874), in respect to any goods vehicle used by them.

The Commission are similarly exempted from the need to obtain a road service licence under the Road Traffic Act, 1930, s. 72 (23 Halsbury's Statutes 661) in respect to any passenger road service provided by them (see s. 65 (1), *post*).

Explaining the reason for these exemptions, on consideration of the Lords' Amendments to the Bill, the Parliamentary Secretary to the Ministry of Transport stated that in the Government's view where Parliament charged a body such as the Commission with providing an effective transport service it would be inappropriate that a scheme of operation which the Commission proposed to put into effect should be subject to the veto of an outside body (see 440 H. of C. Official Report 1519).

*Road and Rail Traffic Act, 1933, ss. 1, 8, 16.*—26 Halsbury's Statutes 872, 880, 887.

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Definitions.*—For definitions of "goods vehicles," "A licence," and "B licence," see notes to s. 41, *ante*; for "liabilities" and "the Minister," see s. 125 (1), *post*.

## 60. Other amendments of Part I of Road and Rail Traffic Act, 1933.—

(1) For the avoidance of doubt, it is hereby declared that any breach of any condition or limitation imposed on any permit granted under this Part of this Act which has effect in relation to a licence is, for all the purposes of Part I of the Road and Rail Traffic Act, 1933 (and in particular the provisions thereof relating to the revocation and suspension of licences and the provisions relating to penalties) to be treated as a breach of the conditions of the licence. [1702]

(2) Where a vehicle specified in a licence is transferred to the Commission by virtue of a notice of acquisition under this Part of this Act, the Commission shall as soon as may be give notice to the licensing authority by whom the licence was granted, and, notwithstanding anything in the proviso to subsection (2) of section ten of the Road and Rail Traffic Act, 1933, the licensing authority shall not be bound to grant an application for a variation of that licence where the variation consists in the specification in the licence of another vehicle in substitution for a vehicle so transferred. [1703]

(3) While the provisions of section twelve of the Road and Rail Traffic Act, 1933 (which relate to holding and subsidiary companies) have effect in relation to, or in relation to any application for, a licence, they shall have effect also in relation to, and in relation to any application for, any permit granted or to be granted under this Part of this Act in so far as that permit has, or is to have, effect in relation to that licence. [1704]

(4) The provisions of sections eighteen and nineteen of the Road and Rail Traffic Act, 1933 (which confer powers and duties on examiners, police constables and certifying officers), and of sections thirty-four and thirty-five of that Act (which relate to forgery of licences and other similar matters, and to prosecutions and penalties for offences) shall have effect as if any regulations made under this Part of this Act were regulations made under that Act, as if any reference to a licence included a reference to a permit under this Part of this Act and as if any reference to a document, plate or mark by which a vehicle is to be identified as being an authorised vehicle included a reference to any document, plate or mark by which a vehicle is to be identified as being authorised to be used under such a permit or by which the area within which vehicles may be used for the carriage of goods for hire or reward is to be ascertainable. [1705]

(5) Section twenty-one of the said Act (which relates to the transfer and assignment of licences) shall, subject to any provision of this Part of this Act expressly authorising an assignment of a permit, apply in relation to permits under this Part of this Act as it applies in relation to licences. [1706]

(6) Without prejudice to any rights which the Commission or any other person would have apart from this subsection, the Commission may apply to the appropriate licensing authority for the revocation, variation or suspension of a licence on any ground on which the authority is by law authorised to revoke, vary or suspend that licence, and the authority shall consider the application. [1707]

*Permit.*—As to the granting of permits, see ss. 52, 53, *ante*. A person aggrieved by the revocation or suspension of a licence by the licensing authority has a right of appeal to the Transport Tribunal (see s. 56 (1), *ante*).

*Road and Rail Traffic Act, 1933, Part I.*—This consists of ss. 1–36, for which see 26 Halsbury's Statutes 872–901. As to the revocation and suspension of licences, see s. 13 thereof, and as to penalties, see ss. 9 and 35 thereof.

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Licensing authority.*—As to the meaning of this expression, see note to s. 51, *ante*.

*Regulations.*—As to regulations, see ss. 61, 119, 120, *post*.

*Provision authorising assignment of a permit.*—See s. 53 (7), *ante*.

*Definition.*—For definition of "carriage of goods," see note to s. 41, *ante*.



**61. Regulations.**—The Minister may make regulations for the purpose of carrying this Part of this Act into effect and in particular, but without prejudice to the generality of the preceding provision, may make regulations with respect to any of the following matters :—

- (a) the forms to be used, and the particulars to be furnished, for any of the purposes of this Part of this Act ;
- (b) the procedure of application for, and the determining of questions in connection with, the grant, variation, suspension and revocation of permits under this Part of this Act ;
- (c) the issue of permits under this Part of this Act, and the issue of copies of permits under this Part of this Act in the case of permits lost or destroyed, including the fees which are to be charged in connection with the issue of such permits or copies ;
- (d) the means by which vehicles are to be identified, whether by plates, marks or otherwise, as being vehicles authorised to be used for the carriage of goods for hire or reward under any such permit and by which the area within which vehicles may be used for that purpose (whether under any such permit or not) is to be ascertainable, and
- (e) the custody of such permits, the production, return and cancellation of such permits on expiration, suspension or revocation, and the custody, production and return of plates ;

and different regulations may be made as respects different classes or descriptions of vehicles and as respects the same class or description of vehicles in different circumstances. [1708]

*General note.*—This section empowers the making of regulations for the purpose of carrying this Part of the Act into effect. See also ss. 119, 120, *post*.

*Definition.*—For definition of “ the Minister,” see s. 125 (1), *post*.

**62. Application of Part III to permits granted under Defence Regulations.**

—Where, in pursuance of an authority given under paragraph (2) of Regulation seventy-two of the Defence (General) Regulations, 1939, a vehicle is used without a licence for a purpose or in circumstances which apart from the authority would render it necessary that a licence should be in force with respect to the vehicle, the provisions of this Part of this Act shall have effect as if the authority were a licence of the same class as that which would have been necessary but for the giving of the authority and, in relation to a vehicle used under such an authority, references to the operating centre of a vehicle shall be construed as references to the premises which served, at the material time, as the permanent base or centre from which the vehicle was normally used for the purpose of carrying goods for hire or reward :

Provided that where, during the whole or any part of the year nineteen hundred and forty-six, a vehicle was authorised to be used under such an authority as aforesaid, but subject to the condition that it should be used for the carriage of goods for hire or reward only in a district limited by reference to the distance of the boundaries thereof from a specified point, any reference to the operating centre of the vehicle, being a reference in relation to the facts of that year, shall as respects the whole or that part of that year be construed as a reference to that point. [1709]

*Defence (General) Regulations, 1939, reg. 72 (2).*—39 Halsbury's Statutes 1052. This regulation, as amended, now has effect by virtue of the Supplies and Services (Transitional Powers) Act, 1945 (38 Halsbury's Statutes 629) and the Supplies and Services (Extended Purposes) Act, 1947 (10 & 11 Geo. 6, c. 55).

*Operating centre.*—For the definition of this term where a vehicle is used otherwise than as stated in this section, see s. 58 (1), *ante*.

## PART IV

## OTHER FORMS OF TRANSPORT AND PORT FACILITIES

*Passenger Road Transport*

**63. Preparation and approval of area road transport schemes.**—(1) The Commission may, at any time, prepare and submit to the Minister a scheme as to the passenger road transport services serving such area as may be specified in the scheme, being a scheme devised for the purpose of promoting or facilitating the promotion of the co-ordination of the passenger transport services serving the area, whether by road or by rail, and the provision of adequate, suitable and efficient passenger road transport services to meet the needs of the area, and the Commission shall as soon as may be review the passenger road transport services operating in Great Britain with a view to determining the areas with respect to which schemes shall be prepared and submitted as aforesaid. [1710]

(2) The Commission, in considering what scheme to submit to the Minister with respect to any area, shall consider any representations which have been made to them by any local authority whose area or any part of whose area is within the area to which the scheme will relate, and, without prejudice to the preceding provisions of this subsection, before submitting a scheme to the Minister, the Commission shall consult every local authority whose area or any part of whose area is within the area to which the scheme relates, every joint committee, joint board, joint authority or other combined body which provides passenger road transport services within or partly within the area to which the scheme relates, being a committee, board, authority or body all the members of which are, or are representatives of, local authorities or the councils of county districts, and any other person providing passenger transport services who, in the opinion of the Commission, is likely to be affected by the scheme. [1711]

(3) A scheme under this section shall not take effect until embodied in an order made by the Minister in accordance with the provisions of the Eighth Schedule to this Act, and the date on which it takes effect shall be such date as may be specified in the order :

Provided that where objection is made in accordance with the said Schedule to the making of the order and is not withdrawn before the making thereof, the order shall be subject to special parliamentary procedure. [1712]

(4) The Minister may—

(a) specify an area, and

(b) direct the Commission to prepare and submit a scheme under this section with respect to the area so specified,

and the Commission shall give effect to any such directions. [1713]

*General note.*—As to the general effect of this section, see Preliminary Note, *ante*, and note to Sched. VIII, *post*.

Dealing with the nature of the schemes to be made under this section, the Minister of Transport on the Committee Stage of the Bill said :—

“ . . . Here we have not proceeded on the plan of transferring these services on a vesting date. We have taken a longer-term method to provide an opportunity for the Commission first, before it promotes any area scheme, to take fully into consideration local circumstances. Hon. Members know the assumption running through this clause—that eventually a large measure of agreement will be reached. It is true the principle of co-ordination will have to be observed, and eventually consummated, but flexibility is left in the form of organisation and type of ownership that will emerge. It does not follow inevitably that every such scheme will reach a full attainment by reason of the absorption of the existing service into any area scheme. Possibly the best example we have at the present time is the London [Passenger] Transport Board. . . . While we do not propose in any way to have any set model, nevertheless it does represent an experience that might prove valuable later on. . . . As these area schemes of co-ordinated transport are built up, the Area Consultative Committees [see s. 6, *ante*] will be brought into being and we shall have this parallel type of machinery ” (H. of C. Official Report, S.C.B., March 20, 1947, col. 1026).

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Local authority, joint committee, etc.*—The term "local authority" means the council of a county, the Common Council of the City of London or the council of a county borough (see s. 125 (1), *post*). As to the reason for the exclusion of non-county borough councils and metropolitan borough councils, see note to s. 125, *post*.

As to the provision to be made by a scheme for compensating local authorities, joint committees, etc., from whom an undertaking is transferred under the scheme, see Sched. VIII, paragraph 1 (1), proviso (a), *post*, and s. 25, *ante*.

*Special parliamentary procedure.*—This is the procedure for the confirmation of orders laid down in the Statutory Orders (Special Procedure) Act, 1945 (38 Halsbury's Statutes 439).

*Directions.*—Powers of giving directions to the Commission in addition to that conferred by sub-s. (4), *ante*, are conferred on the Minister by other sections of the Act; see ss. 4, 6 (8), *ante*, and ss. 66 (9), 71 (4), 92 (2) (b), 94 (3), (7) and 102 (2), *post*. See also s. 85, *post*.

*Definitions.*—For definitions of "the Minister," "passenger road transport service" and "passenger transport service," see s. 125 (1), *post*.

**64. Contents of area road transport schemes.**—(1) A scheme under the last preceding section may provide for all or any of the following matters, that is to say—

- (a) for constituting or specifying the body or bodies who are to provide passenger road transport services operating within or partly within the area, and the body or bodies who are to administer or take part in administering the scheme;
- (b) for the transfer on a date specified in the scheme to any such body as aforesaid of the whole or any part of any undertaking so specified, being an undertaking or part of an undertaking the activities of which consist wholly or partly of operating passenger road transport services within or partly within the area;
- (c) for regulating the relations of the persons providing passenger transport services under the scheme (whether by road or by rail) within or partly within the area, and in particular for the pooling of receipts or expenses;
- (d) for specifying the passenger road transport services which are to be provided within or partly within the area and for prohibiting or restricting the provision within or partly within the area of passenger road transport services otherwise than under the scheme;
- (e) for incorporating, with or without modifications, in relation to any such body as is mentioned in paragraph (a) of this subsection, all or any of the provisions of this Act relating to borrowing or the issue of stock, including the provisions thereof relating to guarantees by the Treasury;
- (f) for incorporating, with or without modifications, in relation to any such body as is mentioned in paragraph (a) of this subsection, being a body who are to provide passenger road transport services operating wholly or partly within the area—
  - (i) any of the provisions of Part V of this Act or of any scheme or regulations made thereunder; or
  - (ii) any other statutory provisions relating to or affecting the charges to be made by the Commission or the terms and conditions applicable to the Commission, whether for or in relation to the provision of passenger road transport facilities or not; or
  - (iii) any of the provisions of the next succeeding section;
- (g) for incorporating, with or without modifications, in relation to any such transfer as is mentioned in paragraph (b) of this subsection, any of the provisions of this Act relating to the transfer of undertakings or parts of undertakings to the Commission, including (subject to the provisions of Part II of the Eighth Schedule to this Act) provisions relating to compensation;
- (h) for repealing or amending any previous scheme in force with respect to the area or any other area the whole or any part of which falls within the area; and

- (i) for making such other consequential or incidental provision as appears necessary or expedient for the purposes of the scheme, including provision for repealing or amending any statutory provision of local application affecting any part of the area :

Provided that a scheme shall not provide for the transfer otherwise than by agreement of part only of an undertaking unless the part to be transferred includes the whole of so much of the undertaking as relates to the operation of passenger road transport services. [1714]

(2) The Commission may be the body specified, or one of the bodies specified, in a provision included in a scheme by virtue of paragraph (a) of subsection (1) of this section, and a part of the undertaking of the Commission may be the subject of a transfer under a provision included in a scheme by virtue of paragraph (b) of the said subsection (1). [1715]

(3) Where a provision included in a scheme by virtue of paragraph (a) of subsection (1) of this section constitutes or specifies some body or bodies other than the Commission to administer or take part in administering the scheme, provision shall also be made in the scheme to secure that at least one member of any such body shall be a person who has had not less than six years experience in local government within the area to which the scheme relates. [1716]

(4) The Minister shall not regard as satisfactory for the purposes of subparagraph (1) of paragraph 1 of the Eighth Schedule to this Act any scheme made under the last preceding section which includes provision for prohibiting or restricting the provision within or partly within the area to which the scheme relates of passenger road transport services otherwise than under the scheme, unless it includes also provision to secure—

(a) that compensation is payable where—

(i) any person was, at the date of the passing of this Act, carrying on an undertaking the activities of which consisted wholly or partly of operating passenger road transport services within or partly within the area to which the scheme relates ; and

(ii) neither the whole nor any part of that undertaking is transferred to a body under the scheme ; and

(iii) a prohibition or restriction contained in or imposed under the scheme will involve a substantial interference with the carrying on by that person of some transport activity which he, or his predecessor in, or in any part of, his undertaking, was carrying on before the said date and which he has, up to the time when the scheme takes effect or, as the case may be, up to the time when the prohibition or restriction is imposed, continued to carry on with only such intermission, if any, as are incidental to the nature of the activity ; and

(b) that the question whether any, and if so what, compensation is so payable is to be determined, in case of dispute by the arbitration tribunal established under Part VIII of this Act. [1717]

*General note.*—This section, with s. 102 and Sched. VIII, paragraph 1, *post*, deals with the contents of area road schemes which in accordance with s. 63, *ante*, the Commission is empowered, and where the Minister so directs, required, to prepare. The provisions of the section may be compared with the provisions of ss. 66–68 (see title HARBOURS, DOCKS AND WHARVES, *ante*), dealing with the contents of harbour schemes.

In order that there may be flexibility to permit the making of different schemes suitable to the local requirements of the various areas, the provisions of the section are drawn in wide and, for the most part, permissive terms. In five instances, however, this section and Sched. VIII, *post*, lay down rules as to the contents of schemes (see note to that Schedule, *post*).

*Sub-s. (1).*—Compare this subsection, setting out the matters for which an area road transport scheme may provide, with s. 66 (3) (see title HARBOURS, DOCKS AND WHARVES, *ante*), setting out the matters for which a harbour scheme may provide.

*Body to provide services and administer scheme.*—The Parliamentary Secretary to the

Ministry of Transport on the Committee Stage of the Bill stated that schemes would operate under some form of public ownership (see H. of C. Official Report, S.C.B., March 20, 1947, col. 1055). Note that by sub-s. (2), *ante*, the Commission itself may be the body to provide the services or to administer the scheme.

*The area.*—This is the area specified in the scheme (see s. 63 (1), *ante*).

*Provisions relating to borrowing, etc.*—As to borrowing, see s. 88, *post*; as to the issue of stock, see s. 89, *post*; as to guarantees by the Treasury, see s. 90, *post*.

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Compensation.*—As to the provisions for the compensation of officers and servants to be included in any scheme which provides for transferring undertakings, see s. 102, *post*.

*Sub-s. (2).*—This subsection is identical, *mutatis mutandis*, with s. 66 (4) (see title HARBOURS, DOCKS AND WHARVES, *ante*) dealing with harbour schemes.

*Sub-s. (3).*—The provisions of this subsection under which an area road transport scheme, except when it is to be administered solely by the Commission, must secure that at least one member of the administrative body or bodies has had at least six years' local government experience in the area, may be compared and contrasted with the provision made by s. 66 (5) (a) (see title HARBOURS, DOCKS AND WHARVES, *ante*), under which in preparing a harbour scheme the Commission are to have regard to the desirability of including on any administrative body (other than the Commission) persons or representatives of persons who are payers of dues for the services or facilities afforded or who are otherwise interested in the trade or activities of the harbour or group of harbours.

*Sub-s. (4).*—The provisions of this subsection which afford protection in certain circumstances to existing passenger road transport undertakings, may be compared and contrasted with the provisions, first, of ss. 54, 55, *ante*, which afford protection in comparable circumstances to existing road haulage undertakings, and secondly, s. 68 (see title HARBOURS, DOCKS AND WHARVES, *ante*), which in comparable circumstances protects existing undertakings providing port facilities.

In the case of passenger road transport undertakings the protection afforded takes the form of a right to compensation, while in the case of road haulage undertakings and undertakings providing port facilities it takes the form of a right to require the acquisition of the undertaking.

In all cases the basis of entitlement to protection is substantial interference with the carrying on of some activity which was being carried on before a specified date (August 6, 1947, in the case of area road transport undertakings, and November 28, 1946, in other cases), and which has continued to be carried on up to the time specified in the respective sections with only such intermissions, if any, as are incidental to the nature of the activity.

*Date of the passing of the Act.*—August 6, 1947.

*Arbitration tribunal.*—The Transport Arbitration Tribunal (see s. 100 (1), *post*). Subject to the provisions of s. 106 (3), *post*, under which a question of law may, and if it is so ordered by the Court of Appeal must, be stated in the form of a special case for determination by the Court of Appeal, the arbitration tribunal have sole jurisdiction in proceedings under sub-s. (4) (b), *ante* (see s. 109 (1), *post*).

As to the powers of the arbitration tribunal where there is delay in settlement of compensation, see ss. 110, 112, *post*.

*Definitions.*—For definitions of "charges," "passenger road transport service," "passenger transport service" and "statutory provision," see s. 125 (1), *post*.

**65. Passenger road transport services of the Commission.**—(1) Sections seventy-two to seventy-six of the Road Traffic Act, 1930 (which relate to road service licences) shall not apply to any passenger road transport service provided, whether under a scheme under the preceding provisions of this Part of this Act or otherwise, by the Commission or by any person acting as agent for the Commission, but neither the Commission nor any such person as aforesaid shall use any public service vehicle for the conveyance of passengers for hire or reward at separate fares except—

(a) on a route approved, as respects so much thereof as falls within any traffic area, by the licensing authority for public service vehicles for that area; and

(b) in accordance with such restrictions as may be imposed by that authority as to the class or description of vehicles which may be used on the route and as to the portions of the route on which, and the points at which, passengers may be taken up or set down:

Provided that the Commission may appeal to the Minister against the refusal of any such authority to give their approval or against any restrictions imposed by them as to the matters aforesaid, and the decision of the Minister shall be final. [1718]

(2) The Commission shall, in respect of services of public service vehicles provided by them, perform such services with regard to the conveyance of mails as are prescribed by the Conveyance of Mails Act, 1893, in respect of a tramway to which that Act applies. [1719]

(3) Regulations made by the Minister may require copies of the timetable and faretable of any service provided by the Commission or by a person acting as agent for the Commission to be carried and to be available for inspection in accordance with the regulations on public service vehicles used on that service. [1720]

(4) The Commission may, if the highway authority consent, construct and maintain on any highway shelters or other buildings for the use of, and barriers for controlling the movements of, persons using the passenger road transport services provided by them, being shelters, buildings or barriers at stopping places of the vehicles of the Commission. [1721]

*General note.*—The provision made by sub-s. (1) of this section, which has the effect of exempting the Commission from the need to apply for a road service licence under the Road Traffic Act, 1930, s. 72 (23 Halsbury's Statutes 661), in respect of any passenger road transport service provided by them, is analogous to the provision made by s. 59, *ante*, exempting the Commission from the need to apply for a carrier's licence under the Road and Rail Traffic Act, 1933, s. 2 (26 Halsbury's Statutes 874), in respect of any goods vehicle used by them.

As to the reason for these exemptions, see note to s. 59, *ante*.

Any of the provisions of this section may be incorporated, with or without modification, in an area road transport scheme in relation to the body who is to provide the services under the scheme (see s. 64 (1) (f) (iii), *ante*).

*Road Traffic Act, 1930, ss. 72-76.*—23 Halsbury's Statutes 661-664.

*Or otherwise.*—This refers to passenger road transport services provided by the Commission as a result of the acquisition of a passenger road transport undertaking forming part of or belonging to a railway undertaking under Part II of the Act.

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Licensing authority for public service vehicles.*—This means the Traffic Commissioners appointed under Part IV of the Road Traffic Act, 1930 (23 Halsbury's Statutes 654-678) for any traffic area (see s. 117, *post*).

*Conveyance of Mails Act, 1893.*—13 Halsbury's Statutes 36. The expression "tramway," as defined in s. 5 of that Act, means a tramway authorised by an Act to be constructed wholly along public roads or streets without any deviation therefrom.

*Definitions.*—S. 125 (2), *post*, provides, *inter alia*, that except in so far as the context otherwise requires expressions used in any provision of the Act in relation to the carriage of passengers by road have the same meanings as in the Road Traffic Act, 1930. Accordingly, subject to the exception noted, the following definitions contained in the Road Traffic Act, 1930, s. 121 (23 Halsbury's Statutes 686), are applicable to the expressions used in this section:—

"Public service vehicle" means a motor vehicle used for carrying passengers for hire or reward other than a vehicle which is a contract carriage within the meaning of s. 61 (1) (c) of the Act of 1930, adapted to carry less than eight passengers or a tramcar or a trolley vehicle.

"Highway authority" in relation to any road, means the authority (being the council of a county, the council of a county borough, the council of an urban district, the Common Council of the City of London, or the council of a metropolitan borough) which is responsible for the maintenance of the road.

For definition of "the Minister," see s. 125 (1), *post*.

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## PART V

### THE TRANSPORT TRIBUNAL AND TRANSPORT CHARGES AND FACILITIES

#### *The Transport Tribunal*

#### 72. Renaming of, and other provisions as to, Railway Rates Tribunal.—

(1) The Railway Rates Tribunal established under the Railways Act, 1921, shall be known as the Transport Tribunal. [1722]

(2) The following amendments shall be made in the Railways Act, 1921—

- (a) in subsection (4) of section twenty (which relates to the qualifications of the permanent members of the Transport Tribunal) for the words "a person of experience in railway business" there shall be substituted the words "a person of experience in transport business";
- (b) in subsection (1) of section twenty-one (which authorises the tribunal to appoint officers or servants) the words "and not exceeding ten" shall be omitted;



- (c) in subsection (1) of section twenty-four (which relates to the panels of additional members of the tribunal) the words "upon the railways" shall be omitted and for the words from "and the other (hereinafter referred to as the railway panel)" to the end of the subsection there shall be substituted the words "and the other (hereinafter referred to as the transport panel) consisting of twelve persons nominated by the Minister from among persons who provide transport services, represent persons who provide transport services, or have had experience in the provision of transport services";
- (d) in subsections (3) and (4) of the said section twenty-four for the words "the railway panel" there shall be substituted the words "the transport panel";
- (e) in subsection (4) of the said section twenty-four for the words "In selecting a member from the general panel" there shall be substituted the words "In selecting a member from either panel".

### [1723]

(3) The provisions of the Tenth Schedule to this Act shall have effect with respect to the powers and procedure of the Transport Tribunal. [1724]

*General note.*—This section renames the Railway Rates Tribunal, established under the Railways Act, 1921 (14 Halsbury's Statutes 316), the Transport Tribunal, and makes amendments to sections of that Act relating thereto consequential upon the enlargement of the Tribunal's jurisdiction under ss. 73, 74, 75, *infra*. The provisions of Sched. X, *post*, apply to the powers and procedure of the Tribunal.

*Railways Act, 1921, ss. 20, 21, 24.*—14 Halsbury's Statutes 332–334.

**73. Transfer to Transport Tribunal of jurisdiction under Road and Rail Traffic Act, 1933, s. 15.**—(1) As from the appointed day, the jurisdiction conferred by section fifteen of the Road and Rail Traffic Act, 1933, on the Appeal Tribunal constituted thereunder shall be transferred to and exercised by the Transport Tribunal, and the said Appeal Tribunal shall cease to exist, and any proceedings pending before the said Appeal Tribunal at the appointed day shall be continued before the Transport Tribunal, and the Transport Tribunal may give any necessary directions as to the manner in which any such proceedings are to be so continued. [1725]

(2) As from the appointed day, subsections (2) to (9) of the said section fifteen, subsection (12) thereof, and in subsection (13) thereof the words from the beginning of the subsection to the word "but" shall be repealed, and references in that section, so far as not repealed as aforesaid, to the said Appeal Tribunal shall be construed as references to the Transport Tribunal when exercising its jurisdiction as to appeals under that section and appeals under Part III of this Act to which that section is applied. [1726]

*General note.*—The Appeal Tribunal under the Road and Rail Traffic Act, 1933, was established by s. 15 of that Act (26 Halsbury's Statutes 885) for the purpose of hearing appeals from persons aggrieved by a decision of the licensing authority for goods vehicles under Part I of that Act. As from the appointed day, the present section transfers the jurisdiction of the Appeal Tribunal (which thereupon ceases to exist) to the Transport Tribunal and makes consequential amendments to the Road and Rail Traffic Act, 1933, s. 15.

*Appointed day.*—As to the meaning of this expression, see s. 125 (3), *post*. No day had been appointed for the purposes of this section up to the time of going to press.

*Road and Rail Traffic Act, 1933, s. 15.*—26 Halsbury's Statutes 885. See the General note, *supra*. The enactments repealed, as from the appointed day, by sub-s. (2), *supra*, are similarly repealed by s. 128 (2) (c) and Sched. XV, *post*.

*Transport Tribunal.*—The tribunal formerly known as the Railway Rates Tribunal (see s. 72 (1), *ante*).

*Appeals under Part III.*—As to appeals under Part III of the Act to which the Road and Rail Traffic Act, 1933, s. 15, *supra*, is applied, see s. 56, *ante*.

**74. Transfer of jurisdiction of High Court, etc.** [1727]

**75. Transfer of jurisdiction of Railway and Canal Commission.** [1728]

### *Charges Schemes*

**76. Charges schemes.**—The Commission shall from time to time prepare, and submit to the Transport Tribunal for confirmation, drafts of schemes



(hereafter in this Act referred to as "charges schemes") for determining, as respects the services and facilities provided by the Commission to which the schemes respectively relate—

- (a) the charges which are to be made by the Commission ; and
- (b) where it is necessary or expedient so to do, the other terms and conditions which are to be applicable to the provision of those services and facilities, including, in particular, terms and conditions as to the liability of the Commission for loss or damage,

and it shall be the duty of the Commission, within two years from the passing of this Act or such longer period as the Minister may allow, to prepare and submit the draft of a scheme or, as the case may be, drafts of a series of schemes, relating or together relating to all the services and facilities provided by the Commission under paragraphs (a) to (c) of subsection (1) of section two of this Act and such other of the services and facilities provided by the Commission as the Commission are of opinion should be dealt with by charges schemes. [1729]

*General note.*—This is the first of six sections dealing with charges schemes. The present section directs the Commission from time to time to prepare draft schemes for confirmation by the Transport Tribunal, the first of which is to be submitted within two years from August 5, 1947, or such longer period as the Minister may allow.

It is the general duty of the Commission to levy such charges as will secure that its revenue is not less than sufficient to meet charges properly chargeable to revenue taking one year with another (see s. 3 (4), *ante*).

As to the overriding provisions governing the exercise by the Commission and the Transport Tribunal of their powers as to charges and charges schemes, see s. 85, *post*. As to the duty of the Consultative Committees to make recommendations with regard to charges, see s. 6 (7), *ante*.

Any of the provisions of this Part of the Act or of any scheme or regulations made under it may be incorporated, with or without modifications, in an area road transport scheme (s. 64 (1) (f) (i), *ante*) or in a trade harbour scheme (s. 66 (3) (h) (i) ; see title HARBOURS, DOCKS AND WHARVES, *ante*).

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Transport Tribunal.*—The tribunal formerly known as the Railway Rates Tribunal (see s. 72 (1), *ante*, and s. 125 (1), *post*).

*Passing of this Act.*—August 6, 1947.

*Definitions.*—For definitions of "charges" and "the Minister," see s. 125 (1), *post*.

**77. Contents of charges schemes.**—(1) A charges scheme may, as respects any of the services and facilities to which it relates, adopt such system for the determination of the charges, or, as the case may be, the charges and other terms and conditions, which are to be applicable as may appear desirable, and in particular and without prejudice to the generality of the foregoing words, and such scheme may, as respects any of the services and facilities to which it relates—

- (a) provide, with or without exceptions, for fixed charges, maximum charges, or standard charges, that is to say, charges which are to be adhered to save as otherwise provided by any provision of the scheme, and, in particular, by any provision of the scheme relating to the making of exceptional charges, special charges or agreed charges ;
- (b) provide in any such case for minimum charges ;
- (c) provide for alternative sets of terms and conditions ;
- (d) enable the Transport Tribunal to make orders authorising or requiring the Commission to afford special treatment, either as respects charges or as respects terms and conditions, or as respects both charges and terms and conditions, in specified cases or classes of cases, and specify the persons who are to be entitled to make or oppose applications to the tribunal for such orders ;
- (e) in all or any cases, leave to the Commission the determination of the charges which are to be made or the terms and conditions which are to be applicable, subject to such conditions and such limitations, if any, as may be provided for in the scheme (including, if

the scheme so provides, conditions as to the approval of the charges, terms and conditions by the Transport Tribunal or conditions otherwise reserving powers to the Transport Tribunal as to the determination of the charges, terms and conditions);

- (f) make provision as to the publication of charges and of the terms and conditions which are to be applicable; and
- (g) make such provision as may be appropriate in relation to through charges,

and different provision may be made for different cases or classes of cases determined by or in accordance with the provisions of the scheme. [1730]

(2) A charges scheme may revoke or amend any previous charges scheme. [1731]

*General note.*—This is the second of six sections relating to charges schemes. The present section deals with the contents of schemes, drafts of which it is the duty of the Commission under s. 76, *ante*, from time to time to prepare and submit to the Transport Tribunal.

As to the general duty of the Commission in regard to charges, see s. 3 (4), *ante*. As to the overriding provisions governing the exercise by the Commission and the Transport Tribunal of their powers as to charges and charges schemes, see s. 85, *post*, and as to the duty of the Consultative Committees to make recommendations with regard to charges, see s. 6 (7), *ante*.

Any of the provisions of this Part of the Act or of any scheme or regulations made hereunder may be incorporated, with or without modification, in an area road transport scheme (s. 64 (1) (f) (i), *ante*) or in a trade harbour scheme (s. 66 (3) (h) (i); see title HARBOURS, DOCKS AND WHARVES, *ante*).

*Charges scheme.*—As to the meaning of this expression, see s. 76, *ante*.

*Transport Tribunal.*—The tribunal formerly known as the Railway Rates Tribunal (see s. 72 (1), *ante*, and s. 125 (1), *post*).

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Definition.*—For definition of "charges," see s. 125 (1), *post*.

**78. Confirmation of charges schemes.**—(1) When the Commission have submitted a draft of a charges scheme to the Transport Tribunal, the Commission shall publish it in such manner as the tribunal may direct, together with a notice specifying the time and the manner (which shall be determined by the tribunal) in which objections to the draft scheme and other representations with respect thereto may be lodged with the tribunal. [1732]

(2) An objection to a draft scheme or any other representation with respect thereto may be lodged by any of the following bodies, that is to say—

- (a) any body representative of any class of persons using the services or facilities to which the scheme will relate;
- (b) any body constituted for the purposes of any scheme for the carrying on, under national ownership or control, of any industry or part of an industry or of any undertaking, being a body using the said services or facilities. [1733]

(3) Any body representative of any class of persons providing for hire or reward services or facilities similar to or comparable with the services or facilities to which the scheme will relate who desire to contend that the charges provided for in the draft scheme are unduly low may lodge a representation to that effect with the tribunal under this section, and the tribunal may, if they think fit, agree to hear the body with respect to that representation. [1734]

(4) As soon as may be after the time for lodging objections and representations has elapsed, the tribunal shall hold a public inquiry into the draft scheme and shall at that inquiry hear the Commission and any such bodies as are mentioned in subsection (2) of this section who desire to be heard, and any such body as is mentioned in the last preceding subsection whom the tribunal may have agreed to hear, and may then either refuse to confirm the scheme or may confirm it with such alterations, if any, as they think fit:

Provided that the tribunal shall not be bound to hear any of the bodies specified in the said subsection (2) unless that body has duly lodged with the

tribunal an objection or other representation with respect to the draft scheme, and shall not hear any such body as is mentioned in the said last preceding subsection except with respect to a representation made by them under that subsection. [1735]

(5) Any scheme confirmed by the tribunal shall be published in such manner as may be specified by the tribunal in confirming the scheme and shall come into force on such date or dates as may be so specified; and the scheme shall have effect notwithstanding anything in any statutory provision relating to the subject matter of the scheme. [1736]

(6) It shall be the duty of the Commission to give to the tribunal all such assistance as is necessary or as the tribunal may require for the purpose of deciding whether or not to confirm the scheme with or without alterations. [1737]

*General note.*—This is the third of six consecutive sections dealing with charges schemes. The present section lays down the procedure to be adopted by the Transport Tribunal with regard to the confirmation of draft schemes submitted by the Commission in accordance with s. 76, *ante*. The section specifies the bodies who may make objections or other representations with regard to a draft scheme.

*No locus standi* with regard to the making of such objections or representations is given to individual persons, since, as the Government spokesman explained during the Report Stage of the Bill in the House of Lords, the Railway Rates Tribunal had been overburdened with applications and it was necessary to avoid that happening in the case of the Transport Tribunal (see 149 H. of L. Official Report 21). Individual persons have the right to make representations to the Consultative Committees, who may make recommendations to the Minister and the Commission (see s. 6 (7), (8), *ante*).

As to the overriding provisions governing the exercise by the Commission and the Transport Tribunal of their powers as to charges, see s. 85, *post*.

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Charges scheme.*—As to the meaning of this expression, see s. 76, *ante*.

*Transport Tribunal.*—The tribunal formerly known as the Railway Rates Tribunal (see s. 72 (1), *ante*, and s. 125 (1), *post*).

*Body representative of any class of persons using the services.*—This expression, in relation to passenger transport services provided by the Commission, includes any local authority within whose area any persons using those services are resident (see s. 81, *post*).

*Body for carrying on an industry under national ownership or control.*—For example, the National Coal Board established under the Coal Industry Nationalisation Act, 1946 (39 Halsbury's Statutes 251).

*Sub-s. (3).*—This subsection, together with ss. 79 (3) and 80 (4) (a), *post*, was inserted by Amendment during the Report Stage of the Bill in the House of Lords in order to protect independent road haulage and passenger road transport undertakings against the possibility of unduly low charges being made by the Commission or by a body constituted or specified under an area road transport scheme (see s. 64 (1) (f), *ante*) for services or facilities competing with those independently provided.

The Government spokesman pointed out that the undertakings were only liable to be prejudiced when the charges were too low; when they were too high the undertakings would be able, since their own charges were not limited by the terms of any charges scheme, to attract additional traffic by themselves charging less (see 149 H. of L. Official Report 29).

*Definitions.*—For definitions of "charges" and "statutory provision," see s. 125 (1), *post*.

**79. Alteration of charges scheme.**—(1) An application for the alteration of a charges scheme may be made to the Transport Tribunal either—

- (a) by the Commission; or
- (b) by any body representative of any class of persons using any services or facilities to which the scheme relates, being persons whose interests will be affected by the alteration; or
- (c) by any body constituted for the purposes of any scheme for the carrying on, under national ownership or control, of any industry or part of an industry or of any undertaking, being a body using any services or facilities to which the scheme relates and whose interests will be affected by the alteration; or
- (d) if and in so far as, in relation to particular matters, the scheme so provides, by any other person using any services or facilities to which the scheme relates, being a person whose interests will be affected by the alteration:

Provided that the tribunal shall not entertain any application under this section for the alteration of any scheme if—

- (i) less than twelve months have elapsed since the coming into force of the scheme ; or
- (ii) in their opinion the application relates to a matter which has been the subject of consideration by the tribunal within the twelve months immediately preceding the making of the application ; or
- (iii) in their opinion the alteration is one which owing to its magnitude ought not to be made except by an amending scheme or as the result of such a review as is provided for by the next succeeding section. [1738]

(2) Where an application is made to the Transport Tribunal under this section (not being an application which the tribunal refuse to entertain) the person making the application shall publish it in such manner as the tribunal may direct together with a notice specifying the time and manner (which shall be determined by the tribunal) in which objections to the application and other representations with respect thereto may be lodged with the tribunal by the Commission or any such body or other person as are specified in subsection (1) of this section. [1739]

(3) Any body representative of any class of persons providing for hire or reward services or facilities similar to or comparable with the services or facilities to which the scheme relates who desire to contend that the alteration sought for in the application would cause the charges made under the scheme to be unduly low may lodge a representation to that effect with the tribunal within the time and in the manner specified for objections and representations under the last preceding subsection, and the tribunal may, if they think fit, agree to hear the body with respect to that representation. [1740]

(4) As soon as may be after the time for lodging objections and representations has elapsed, the tribunal shall hold a public inquiry into the application and shall at that inquiry hear the Commission, the applicant and any such body or other person as are specified in subsection (1) of this section who desire to be heard, and any such body as is mentioned in the last preceding subsection whom the tribunal may have agreed to hear, and may then make such order, if any, with respect to the matter of the application as they think fit :

Provided that the tribunal shall not be bound to hear any body or other person, other than the Commission and the applicant, who have not duly lodged with the tribunal an objection or other representation with respect to the application and shall not hear any such body as is mentioned in the said last preceding subsection except with respect to a representation made by them under that subsection. [1741]

(5) Where an order is made under the last preceding subsection altering a charges scheme, particulars of the alteration shall, unless the tribunal determine that in all the circumstances publication is unnecessary, be published in such manner as the tribunal may specify at the time of the making of the order. [1742]

(6) It shall be the duty of the Commission to give to the tribunal all such assistance as is necessary or as the tribunal may require for the purpose of deciding whether any, and if so what, order should be made with respect to the matter of the application. [1743]

*General note.*—This is the fourth of six consecutive sections dealing with charges schemes. Schemes are to be prepared by the Commission in accordance with s. 76, *ante*, and may be confirmed by the Tribunal in accordance with s. 78, *ante*. The present section, which provides for the alteration of schemes, specifies the bodies and persons who may apply for the alteration of a scheme, states certain circumstances in which the tribunal are not to entertain an application, and lays down the procedure to be followed in connection with the alteration of a scheme.

As to the general duty of the Commission in regard to the levying of charges, see s. 3 (4), *ante*. As to the overriding provisions governing the exercise by the Commission and the Transport Tribunal of their powers as to charges and charges schemes, see s. 85, *post*.

Any of the provisions of this Part of the Act or of any scheme or regulations made hereunder may be incorporated, with or without modification, in an area road transport scheme (see s. 64 (1) (f) (i), *ante*) or in a trade harbour scheme (s. 66 (3) (h) (i) ; see title HARBOURS, DOCKS AND WHARVES, *ante*).

*Charges scheme.*—As to the meaning of this expression, see s. 76, *ante*.

*Transport Tribunal.*—The tribunal formerly known as the Railway Rates Tribunal (see s. 72 (1), *ante*).

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Body representative of any class of persons using the services.*—This expression, in relation to passenger transport services provided by the Commission, includes any local authority within whose area any persons using those services are resident (see s. 81, *post*).

*Body for carrying on any industry under national ownership or control.*—For example, the National Coal Board established under the Coal Industry Nationalisation Act, 1946 (39 Halsbury's Statutes 251).

*Sub-s. (3).*—As to the effect of this subsection, see note to sub-s. (3) of s. 78, *ante*.

*Definitions.*—For definitions of "alteration" and "charges," see s. 125 (1), *post*.

**80. Review of charges schemes.**—(1) The Minister may at any time require the Transport Tribunal to review the operation of any charges scheme. [1744]

(2) Where the tribunal have been required by the Minister to review the operation of any charges scheme, they shall give notice of the requirement to the Commission and shall require the Commission to publish notice thereof in such manner as the tribunal may specify, together with a notice specifying the time and manner (which shall be determined by the tribunal) in which representations with respect to the scheme may be lodged with the tribunal. [1745]

(3) Representations may be lodged with the tribunal under this section by the following bodies, that is to say—

- (a) any body representative of any class of persons making use of the services or facilities to which the scheme relates ; or
- (b) any body constituted for the purposes of any scheme for the carrying on, under national ownership or control, of any industry or part of an industry or any undertaking, being a body using the said services or facilities. [1746]

(4) Where—

- (a) any body representative of any class of persons providing for hire or reward services or facilities similar to or comparable with the services or facilities to which the scheme relates desire to contend that the charges made under the scheme are unduly low ; or
- (b) any body representative of any class of persons making use of services or facilities provided by the Commission other than the services or facilities to which the scheme relates desire to contend that the charges made under the scheme are unduly low and that by reason thereof the charges made for those other services or facilities are unduly high,

the body may lodge a representation to that effect with the tribunal under this section, and the tribunal may, if they think fit, agree to hear the body with respect to that representation. [1747]

(5) As soon as may be after the time for lodging representations has elapsed, the tribunal shall hold a public inquiry into the scheme and shall at that inquiry hear the Commission and any of the bodies mentioned in subsection (3) of this section who desire to be heard and such, if any, of the bodies mentioned in the last preceding subsection as the tribunal may have agreed to hear and may then alter the scheme in such manner as they think fit or may determine that no alteration is necessary, and any alteration made by the tribunal shall be published in such manner, and shall come into force on such date, as the tribunal may specify :

Provided that the tribunal shall not be bound to hear any of the bodies specified in the said subsection (3) unless that body has duly lodged with the tribunal a representation with respect to the scheme, and shall not hear any of the bodies mentioned in the said last preceding subsection except with respect to a representation made by the body in question under that subsection. [1748]

(6) It shall be the duty of the Commission to give to the tribunal all such assistance as is necessary or as the tribunal may require for the purposes of any review under this section. [1749]

*General note.*—This is the fifth of six consecutive sections dealing with charges schemes. Under the present section the Minister may at any time require the Transport Tribunal to review the operation of a scheme.

As to the general duty of the Commission in regard to the levying of charges, see s. 3 (4), *ante*. As to the overriding provisions governing the exercise by the Commission and the Transport Tribunal of their powers as to charges and charges schemes, see s. 85, *post*.

Any of the provisions of this Part of the Act or of any scheme or regulations made hereunder may be incorporated, with or without modification, in an area road transport scheme (s. 64 (1) (f) (i), *ante*), or in a trade harbour scheme (s. 66 (3) (h) (i); see title *HARBOURS, DOCKS AND WHARVES, ante*).

*Transport Tribunal.*—The tribunal formerly known as the Railway Rates Tribunal (see s. 72 (1), *ante*, and s. 125 (1), *post*).

*Charges scheme.*—As to the meaning of this expression, see s. 78, *ante*.

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Body representative of any class of persons using the services.*—This expression, in relation to passenger transport services provided by the Commission, includes any local authority within whose area any persons using those services are resident (see s. 81, *post*).

*Body for carrying on any industry under national ownership or control.*—For example, the National Coal Board established under the Coal Industry Nationalisation Act, 1946 (39 Halsbury's Statutes 251).

*Sub-s. (4) (a).*—As to the effect of this subsection see note to sub-s. (3) of s. 78, *ante*.

*Definitions.*—For definitions of "alteration," "charges" and "the Minister," see s. 125 (1), *post*.

**81. Locus standi of local authorities as regards charges schemes.**—Any reference in this Part of this Act to any body representative of any class of persons using services or facilities shall, in relation to passenger transport services provided by the Commission, include a reference to any local authority within whose area any persons using those services are resident. [1750]

*General note.*—This is the last of six consecutive sections dealing with charges schemes. It has the effect, so far as passenger transport services provided by the Commission are concerned, of enabling a local authority within whose area any persons using these services are resident: (i) to lodge objections to a draft scheme or make other representations thereon (see s. 78 (2) (a), *ante*); (ii) to apply for the alteration of a scheme (see s. 79 (1) (b), *ante*); and (iii) to lodge representations on the review of a scheme (see s. 80 (3) (a), *ante*).

In any such case, the local authority will be entitled, if they so desire, to be heard at the ensuing public inquiry (see ss. 78 (4), 79 (4), 80 (5), *ante*).

The Minister of Transport stated during the Committee Stage of the Bill that it was a local authority's function to represent the population in its area (H. of C. Official Report, S.C.B., March 4, 1947, col. 530).

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Local authority.*—This means the council of a county, the Common Council of the City of London, or the council of a county borough (see s. 125 (1), *post*).

*Definition.*—For definition of "passenger transport services," see s. 125 (1), *post*.

### *Transitional provisions*

**82. Transitional provisions as to charges.** [1751]

**83. Transitional provisions as to exceptional rates and fares of the Commission.**—(1) The provisions of this section shall have effect as respects charges made otherwise than under a charges scheme. [1752]

(2) Where, in the opinion of the Commission, any exceptional rate which under the provisions of Part III of the Railways Act, 1921, is in operation on the date of transfer in respect of any traffic is unduly low by reason of the competition of road haulage undertakers, canal carriers or persons engaged in coastal shipping, the Commission may at any time increase that rate up to not more than sixty per cent of the standard rate for the time being in operation under the said Act, and section thirty-eight of the said Act

(which prescribes the procedure to be followed as to alterations of exceptional rates) shall not have effect in relation to such an increase :

Provided that, if any trader is aggrieved by the raising of any exceptional rate under this subsection, he may appeal to the Transport Tribunal, and if the tribunal are satisfied that the Commission were not justified in raising the rate under this subsection, they may order the lower rate to be restored from such date as they may determine and the Commission shall give effect to that order. [1753]

(3) So much of sections thirty-seven, thirty-eight and forty-one of the said Act as requires the granting or reduction of exceptional rates or the charging of exceptional fares to be reported to the Minister or enables the Minister to refer any such matter to the Transport Tribunal shall not apply to rates and fares of the Commission, and accordingly, in relation to the Commission—

- (a) the said section thirty-seven shall have effect as if in subsection (1) thereof, the words from “which rates” to “reported to the Minister”, and the whole of subsection (2), were omitted ;
- (b) subsection (2) of the said section thirty-eight shall have effect as if the words from “but any such reduction” to the end of the subsection were omitted ; and
- (c) the said section forty-one shall have effect as if the words from “but the circumstances” to the end of the section were omitted. [1754]

(4) In its application to the Commission, subsection (11) of section thirty-seven of the Road and Rail Traffic Act, 1933 (which relates to agreed charges for the carriage of merchandise) shall have effect as if the words from “where the Tribunal” where those words first occur to the words “the Minister may allow, and” were omitted. [1755]

(5) In its application to the Commission, section thirty-nine of the Road and Rail Traffic Act, 1933 (which relates to agreed charges and exceptional rates competing with coastal shipping) shall have effect as if—

- (a) in subsection (2) for the words “If at any time a representation is made to the Minister” there were substituted the words “A representation may at any time be made to the tribunal”, and the words from “the Minister shall consult” to the end of the subsection were omitted ;
- (b) in subsections (3) and (5), for the word “reference” there were substituted the word “representation”. [1756]

*Charges scheme.*—As to the meaning of this expression, see s. 76, *ante*.

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Railways Act, 1921, Part III.*—This consists of ss. 36–61, for which see 14 Halsbury's Statutes 332–360.

*Persons engaged in coastal shipping.*—The Commission have power to make working agreements with persons engaged in coastal shipping for co-ordinating their activities with those of the Commission (s. 70 ; see title HARBOURS, DOCKS AND WHARVES, *ante*). A Coastal Shipping Committee is to be established to consider and report on all matters jointly affecting such persons and the Commission (s. 71 ; see title HARBOURS, DOCKS AND WHARVES, *ante*).

*Road and Rail Traffic Act, 1933, ss. 37 (11), 39 (2), (3), (5).*—26 Halsbury's Statutes 901–905.

*Definitions.*—For definitions of “charges,” “coastal shipping” and “the Minister,” see s. 125 (1), *post*.

**84. Temporary additional jurisdiction of Transport Tribunal as to classification of merchandise.** [1757]

#### *Overriding and miscellaneous provisions*

**85. Overriding provisions as to exercise by Commission and Transport Tribunal of their powers as to charges.**—Neither the Commission nor the Transport Tribunal shall do anything in the exercise of their respective powers as respects charges and the submission, confirmation and alteration



of charges schemes which in their opinion will prevent the Commission from discharging the Commission's general duty to secure that their revenue is not less than sufficient for making provision for the meeting of charges properly chargeable to revenue taking one year with another, or which in their opinion will prevent the Commission from giving effect to any direction of the Minister under any provision of this Act; and it is hereby declared that the duty of the Commission to give effect to such directions as aforesaid includes a duty to make such applications and to do such other things in relation to the making or alteration of charges schemes as are required in order to give effect to any such direction. [1758]

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*). As to the Commission's general duty to secure that their revenue is not less than sufficient to meet charges properly chargeable to revenue, see s. 3 (4), *ante*.

*Transport Tribunal.*—The tribunal formerly known as the Railway Rates Tribunal (see s. 72 (1), *ante*).

*Charges schemes.*—As to the submission, confirmation and alteration of charges schemes, see, respectively, ss. 76, 78 and 79, *ante*.

*Charges properly chargeable to revenue.*—See s. 93, *post*.

*Directions.*—Powers of giving directions to the Commission are conferred on the Minister by ss. 4, 6 (8), 63 (4), 66 (9) and 71 (4), *ante*, and ss. 92 (2) (b), 94 (3), (7) and 102 (2), *post*.

*Definitions.*—For definitions of "alteration," "charges" and "the Minister," see s. 125 (1), *post*.

## 86. Discontinuance of annual review of charges, etc. [1759]

## 87. Provisions as to railway freight rebates. [1760]

### PART VI

### FINANCE

**88. Borrowing powers of the Commission.**—(1) The Commission may, with the consent of the Minister, or in accordance with the terms of any general authority given by him, borrow temporarily, by way of overdraft or otherwise, such sums as the Commission may require for meeting their obligations or discharging their functions under this Act:

Provided that the aggregate of the amounts outstanding in respect of any temporary loans raised by the Commission under this subsection shall not at any time exceed twenty-five million pounds. [1761]

(2) The Commission may, with the consent of the Minister and the approval of the Treasury, borrow money by the issue of British transport stock for all or any of the following purposes, that is to say—

- (a) the provision of money for meeting any expenses incurred in connection with any permanent work the cost of which is properly chargeable to capital;
- (b) the redemption of any British transport stock;
- (c) the provision of working capital;
- (d) the provision of money required to satisfy any right to compensation in respect of the transfer to the Commission of the whole or any part of an undertaking which, under any provision of this Act, is to be defrayed in cash, not being money required to pay compensation to officers or servants or to make to a local authority periodical payments in respect of any of their securities;
- (e) the purchase, otherwise than simply by way of investment, of any securities of any body corporate which is carrying on or about to carry on or which directly or indirectly controls another body corporate which is carrying on or about to carry on, any such activities as are specified in subsection (1) of section two of this Act;
- (f) the provision of any money, not being money properly chargeable to revenue, which is required for lending to, or is required to be paid under any guarantee given for the benefit of, any such body corporate

as is mentioned in the last preceding paragraph or any other person who is carrying on or about to carry on any such activities as are therein mentioned ;

- (g) any other purpose for which capital moneys are properly applicable, including the repayment of any money temporarily borrowed under subsection (1) of this section for any of the purposes mentioned in the preceding paragraphs of this subsection :

Provided that the total amount borrowed under this subsection, otherwise than for the purposes specified in paragraphs (b) and (d) thereof, shall not exceed two hundred and fifty million pounds.

The reference in paragraph (d) of this subsection to any provision of this Act includes a reference to any provision thereof applied, with or without modifications, by any scheme or order under this Act. [1762]

(3) Save as aforesaid, the Commission shall not borrow any money. [1763]

*General note.*—This section is in similar terms to s. 39 of the Electricity Act, 1947 (see title ELECTRICITY SUPPLY, *ante*), except that that section places no limit on the amount of temporary loans corresponding to the limit laid down by the proviso to sub-s. (1), *ante*.

Sub-s. (1), *ante*, is similar to s. 27 of the Coal Industry Nationalisation Act, 1946 (39 Halsbury's Statutes 283), but since that Act does not empower the National Coal Board to borrow permanently except from the Minister of Fuel and Power it contains no provision corresponding to sub-s. (2), *ante*.

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Consent of the Minister.*—The Government spokesman on the Committee Stage of the Bill in the House of Lords stated that it was not the intention of the Minister to use his powers under sub-s. (1), *ante*, so as to exercise any close or day-to-day control over the operations of the Commission, and that a general authority covering borrowing by the Commission would be given as occasion might arise. He pointed out that the Minister, through the Treasury, might be placed in the position of a guarantor (see s. 90, *post*) and must accordingly have the power to supervise temporary borrowing by the Commission (see 149 H. of L. Official Report 61).

*British transport stock.*—See s. 89, *post*.

*Compensation defrayed in cash.*—Compensation will be defrayed in cash up to the amount specified in the proviso to s. 48 (3), *ante*, in connection with the transfer of a road haulage undertaking under Part III of the Act or of a passenger road transport undertaking or harbour undertaking under a scheme or order incorporating similar compensation provisions (see ss. 48 (3), proviso, and 64 (1) (g), *ante*; and ss. 66 (3) (i) and 68 (3), in title HARBOURS, DOCKS AND WHARVES, *ante*).

The additional compensation payable to local authorities under s. 114, *post*, will be payable wholly in cash.

*Periodical payments to a local authority.*—S. 25 (4), *ante*, provides for the making of periodical payments with respect to certain securities of local authorities by way of compensation when an undertaking belonging to a local authority is acquired by the Commission under Part II of the Act.

Any schemes made under Part IV of the Act which provide for the transfer of a local authority's undertaking must contain like provision for compensating that authority (see s. 63 (3), *ante* (road passenger transport undertakings), and s. 66 (8), in title HARBOURS, DOCKS AND WHARVES, *ante* (harbour undertakings) and Sched. VIII, Part I, *post*).

*Body which directly or indirectly controls another body.*—As to the determination of the question whether or not any body corporate directly or indirectly controls any other body corporate, see s. 125 (4) and Sched. XIII, *post*.

*Money properly chargeable to revenue.*—See s. 93, *post*.

*Definitions.*—For definitions of "borrow," "local authority," "the Minister," "officer" and "securities," see s. 125 (1), *post*.

## 89. British transport stock.—(1) The Commission—

- (a) may create and issue any stock required for the purpose of exercising their powers under the last preceding section ;
- (b) shall create and issue such stock as is required for the purpose of satisfying any right to compensation which under any provision of this Act is to be satisfied by the issue of British transport stock ; and
- (c) may, with the consent of the Minister and the approval of the Treasury, create and issue stock in order to satisfy the whole or any part of the amount payable by them on the acquisition of the whole or part of any other undertaking acquired by them by agreement ;

and the stock so created and issued is in this Act referred to as "British transport stock";

Provided that the creation and issue of stock under paragraph (c) of this subsection shall be deemed for the purposes of the proviso to subsection (2) of the last preceding section to be a borrowing by the Commission of the amount satisfied by the creation and issue of the stock.

The reference in paragraph (b) of this subsection to compensation which under any provision of this Act is to be satisfied by the issue of British transport stock includes a reference to compensation which is to be so satisfied under any provision of this Act as applied by any scheme or order made under this Act. [1764]

(2) The British transport stock which is to be created and issued under paragraph (b) of subsection (1) of this section in satisfaction of a claim to compensation of any amount shall subject to the provisions of the Fifth Schedule to this Act be such stock as is, in the opinion of the Treasury, equal in value at the date of the issue to that amount, regard being had to the market value of government securities at that date. [1765]

(3) Subject to the provisions of this section and of the said Fifth Schedule, British transport stock shall be issued, transferred, dealt with and redeemed upon such terms and in accordance with such provisions as may be prescribed by regulations made by the Minister, with the approval of the Treasury, and any such regulations may, in relation to any British transport stock, apply with or without modifications any provision of the Local Loans Act, 1875, or of any enactments relating to stock issued by a local authority. [1766]

(4) Notwithstanding anything in the two last preceding subsections, so much of any British transport stock created and issued in satisfaction of compensation in the case of any of the bodies specified in the Third Schedule to this Act as represents securities specified in Part III of the Fourth Schedule to this Act, shall be of the same nominal amount, shall carry interest at the same rates and payable at the same dates, and shall be redeemed at the same dates and on the same notice and by payment of the same amounts, as in the case of the securities. [1767]

(5) Any British transport stock in which no person is interested except the Commission shall be cancelled. [1768]

*General note.*—British transport stock so far issued in satisfaction of compensation is a dated stock and, unlike the stock issued by way of compensation to colliery concerns under the Coal Industry Nationalisation Act, 1946 (see ss. 23 *et seq.* thereof; 39 Halsbury's Statutes 279 *et seq.*), is freely negotiable.

This section may be compared with s. 40 of the Electricity Act, 1947 (see title ELECTRICITY SUPPLY, *ante*).

*Compensation to be satisfied by the issue of stock.*—See s. 48, *ante*. The provisions of that section may be incorporated in an area road transport scheme (see s. 64 (1) (g), *ante*), a harbour scheme (s. 66 (3) (i), see title HARBOURS, DOCKS AND WHARVES, *ante*) and an order of the Minister made under s. 68, *ante* (s. 68 (3), see title HARBOURS, DOCKS AND WHARVES, *ante*).

*Regulations.*—Under sub-s. (3), *supra*, the Minister of Transport with Treasury approval has made the British Transport Stock Regulations, 1947, dated December 11, 1947 (S. R. & O., 1947, No. 2686).

*Local Loans Act, 1875.*—12 Halsbury's Statutes 242.

**90. Treasury guarantees.**—(1) The principal of and the interest on any British transport stock created and issued under paragraph (b) of subsection (1) of the last preceding section or created and issued for borrowing money for the purposes specified in paragraph (d) of subsection (2) of the last but one preceding section, shall be guaranteed by the Treasury, and the Treasury may guarantee, in such manner and on such conditions as they think fit, the redemption or repayment of, and the payment of any interest on, any other British transport stock or any temporary loan raised by the Commission. [1769]

(2) Any sums required by the Treasury for fulfilling any such guarantee as is provided for by subsection (1) of this section shall be charged on and

issued out of the Consolidated Fund of the United Kingdom or the growing produce thereof (hereinafter referred to as "the Consolidated Fund"), and any such sums shall be repaid, together with interest thereon at such rate as the Treasury may determine, by the Commission to the Treasury in such manner and over such period as the Treasury may, after consultation with the Minister, determine. [1770]

(3) Immediately after a guarantee is given under this section, the Treasury shall lay a statement of the guarantee before each House of Parliament. [1771]

(4) Where any sum is issued out of the Consolidated Fund under this section, the Treasury shall forthwith lay before each House of Parliament a statement that that sum has been so issued. [1772]

*General note.*—This section provides that the Treasury must guarantee any British transport stock issued by the Commission for the purpose either of satisfying any right to compensation required to be satisfied in stock (as to which see notes to s. 89, *ante*) or of providing money to satisfy any right to compensation (for which the Commission are empowered to borrow) required to be defrayed in cash (see notes to s. 88, *ante*).

The section further provides that the Treasury may guarantee any British transport stock issued for any other purpose or any temporary loan raised by the Commission.

This section is in similar terms to s. 42 of the Electricity Act, 1947 (see title *ELECTRICITY SUPPLY*, *ante*).

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Definition.*—For definition of "the Minister," see s. 125 (1), *post*.

**91. Ordinary powers of investment.**—Any sums in the hands of the Commission which are not immediately required by them for the purposes of their business may be invested by them in such manner as they think proper. [1773]

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

**92. General reserve.**—(1) Without prejudice to the power of the Commission to establish appropriate reserves for replacements or other purposes, the Commission shall establish and maintain a general reserve. [1774]

(2) The management of the general reserve, the sums to be carried from time to time to the credit thereof, and the application of the moneys comprised therein shall be as the Commission may determine :

Provided that—

(a) no part of the moneys comprised in the general reserve shall be applied otherwise than for the purposes of the Commission ; and

(b) the Minister may, with the approval of the Treasury, give to the Commission directions as to any matter relating to the establishment or management of the general reserve or the carrying of sums to the credit thereof, or the application thereof, and the Commission shall give effect to any such directions. [1775]

(3) It is hereby declared that one of the purposes of the general reserve is the prevention of frequent fluctuations in the charges made by the Commission, and the powers of the Commission in relation to the general reserve shall be exercised accordingly. [1776]

*General note.*—This section may be compared with s. 43 of the Electricity Act, 1947 (see title *ELECTRICITY SUPPLY*, *ante*). Note that both sub-s. (6) of the said s. 43 and sub-s. (3), *supra*, make provision for the prevention of frequent fluctuations in charges. Compare also s. 29 of the Coal Industry Nationalisation Act, 1946 (39 Halsbury's Statutes 283).

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Directions.*—Powers of giving directions to the Commission in addition to that conferred by sub-s. (2) (b), *supra*, are conferred on the Minister by ss. 4, 6 (8), 63 (4), 66 (9), 71 (4), *ante*, and ss. 94 (3), (5) and 102 (2), *post*. See also s. 85, *ante*.

*Definition.*—For definition of "the Minister," see s. 125 (1), *post*.

**93. Sums which are to be chargeable to revenue.**—The Commission shall charge to revenue in every year all charges which are proper to be made to revenue, including, in particular, proper allocations to general reserve,

proper provision for depreciation or renewal of assets and proper provision for redemption of capital, and all payments (including the payments which are by the relevant provisions of this Act, or by any other relevant statutory provision, to be deemed to be capital payments) which fall to be made, in lieu of any other form of compensation, to any local authority in that year in respect of any undertaking transferred to the Commission, and references in this Act to charges properly chargeable to revenue shall be construed accordingly. [1777]

*General note.*—This section is in very similar terms with s. 45 of the Electricity Act, 1947 (see title ELECTRICITY SUPPLY, *ante*).

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Payments to any local authority.*—See s. 25, *ante*, and s. 114, *post*.

*Definitions.*—For definitions of “local authority” and “statutory provision,” see s. 125 (1), *post*.

#### 94. Accounts and statistics.—(1) The Commission—

- (a) shall cause proper accounts and other records in relation thereto to be kept; and
- (b) shall prepare an annual statement of accounts in such form and containing such particulars, compiled in such manner, as the Minister may from time to time direct with the approval of the Treasury. [1778]

(2) The said annual statement shall be so framed as to provide, as far as may be, separate information as respects the principal activities of the Commission, and, in combination with the periodical statistics and returns rendered by the Commission, to show, as far as may be, the financial and operating results of each such activity, and the Minister and the Treasury shall exercise their powers under this section accordingly. [1779]

(3) The accounts of the Commission shall be audited by an auditor or auditors to be appointed annually by the Minister and in accordance with a scheme of audit approved by him and, if the Minister so directs, the accounts of the Commission as respects any part of their undertaking specified in the direction shall be separately audited by an auditor or auditors so appointed as aforesaid. [1780]

(4) So soon as the accounts of the Commission have been audited as aforesaid, they shall send a copy of the statement of accounts referred to in paragraph (b) of subsection (1) of this section to the Minister, together with a copy of the report made by the auditor or auditors on that statement, and a copy of that statement and of any such report shall be included in the report which is under Part I of this Act to be laid by the Minister annually before each House of Parliament. [1781]

(5) The Commission shall compile and render to the Minister such periodical statistics and returns relating to each of their principal activities in such forms and at such times as the Minister may direct, and the Minister shall lay a copy of any such statistics and returns before each House of Parliament:

Provided that, in giving any directions under this subsection, the Minister shall have regard to the desirability of requiring the Commission to compile and render statistics and returns on a basis which, in his opinion, is reasonably comparable with that of the statistics and returns required at the date of the passing of this Act to be rendered by railway and canal companies by or under the enactments mentioned in the next succeeding subsection. [1782]

(6) Sections nine and ten of the Regulation of Railways Act, 1871, sections thirty-two and thirty-nine of the Railway and Canal Traffic Act, 1888, the Railway Companies (Accounts and Returns) Act, 1911, and section seventy-seven of the Railways Act, 1921 (which relate to the keeping of and audit of accounts of railway companies, and the making of returns and the keeping of statistics by railway and canal companies) and, except in so far

as the Minister may by order otherwise provide, so much of any other statutory provision as relates to the accounts, statistics and returns to be kept or made by the owners of undertakings transferred to the Commission (whether in whole or in part and whether by agreement or otherwise), or as relates to the audit or publication of any such accounts, shall not apply to the Commission. [1783]

*General note.*—This section may be compared with s. 46 of the Electricity Act, 1947 (see title ELECTRICITY SUPPLY, *ante*).

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Directions.*—In addition to the powers conferred by sub-ss. (3) and (5), *ante*, powers of giving directions to the Commission are conferred on the Minister by ss. 4, 6 (8), 63 (4), 66 (9), 71 (4), 92 (2) (b), *ante*, and s. 102 (2), *post*. See also s. 85, *ante*.

*Annual report to Parliament.*—As to the report which under Part I of the Act is to be laid before Parliament, see s. 4 (7), *ante*.

*Statistics and returns.*—It may be noted that the Minister of Transport is a competent authority for the purposes of the Statistics of Trade Act, 1947 (10 and 11 Geo. 6, c. 39) which Act deals, *inter alia*, with the obtaining by Government departments of statistical information.

*Passing of the Act.*—August 6, 1947.

*Regulation of Railways Act, 1871*, ss. 9, 10.—14 Halsbury's Statutes 196.

*Railway and Canal Traffic Act, 1888*, ss. 32, 39.—14 Halsbury's Statutes 235, 239.

*Railway Companies (Accounts and Returns) Act, 1911*.—14 Halsbury's Statutes 274.

*Railways Act, 1921*, s. 77.—14 Halsbury's Statutes 367.

*Order.*—As to orders, see s. 120, *post*.

*Definitions.*—For definitions of "the Minister" and "statutory provision," see s. 125 (1), *post*.

## PART VII

### CONDITIONS OF EMPLOYMENT, PENSIONS AND COMPENSATION TO OFFICERS AND SERVANTS

#### *Conditions of Employment*

**95. General provisions as to terms and conditions of employment of staff, etc.**—(1) It shall be the duty of the Commission, except so far as the Commission are satisfied that adequate machinery exists for achieving the purposes of this subsection, to seek consultation with any organisation appearing to the Commission to be appropriate, with a view to the conclusion between the Commission and that organisation of such agreements as appear to the parties to be desirable with respect to the establishment and maintenance of machinery for—

- (a) the settlement by negotiation of terms and conditions of employment of persons employed by the Commission, with provision for reference to arbitration in default of such settlement in such cases as may be determined by or under the agreements; and
- (b) the promotion and encouragement of measures affecting the safety, health and welfare of persons employed by the Commission, and the discussion of other matters of mutual interest to the Commission and such persons, including efficiency in the operation of the Commission's services. [1784]

(2) Where the Commission conclude such an agreement as is mentioned in the last preceding subsection or any variation is made in such an agreement, the Commission shall forthwith transmit particulars of the agreement or the variation to the Minister and the Minister of Labour and National Service. [1785]

(3) Without prejudice to the generality of the provisions of this Act relating to the effect of a delegation of powers of the Commission to an Executive, it is hereby declared that the preceding provisions of this section require to be satisfied separately as respects the persons under the control of each Executive or under the direct control of the Commission itself, and references in the preceding provisions of this section to the Commission shall be construed accordingly:

Provided that where such an agreement as is mentioned in subsection (1) of this section is concluded by an Executive, or any variation is made in such

an agreement by an Executive, the Executive concerned shall forthwith transmit particulars of the agreement or the variation to the Commission and the Commission shall then transmit those particulars to the Minister and the Minister of Labour and National Service. [1786]

(4) Nothing in this section shall be construed as prohibiting the Commission or any Executive from taking part together with other employers in the establishment and maintenance of machinery for the settlement of terms and conditions of employment and the promotion and encouragement of measures affecting the safety, health and welfare of their workers and the discussion of other matters of mutual interest to them and their workers. [1787]

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Executive.*—As to the delegation of the Commission's powers to an Executive, see s. 5, *ante*.

**96. Provisions as to Part IV of Railways Act, 1921, and Part VI of London Passenger Transport Act, 1933.** [1788]

**97. Police force conference.** [1789]

### *Pensions*

**98. Provisions as to pension rights.**—(1) The Minister may make regulations for all or any of the following purposes, that is to say—

(a) for providing pensions to or in respect of—

(i) persons who are or have been in the employment of the Commission or any body in whom there vests or to whom there is transferred any undertaking or part of an undertaking under any of the provisions of a scheme or order made under this Act ;

(ii) persons who have been employed in any undertaking the whole of which under or by virtue of any of the provisions of this Act or of a scheme or order made thereunder or under any agreement vests in or is transferred to the Commission or any other body but who have not been taken into the service of the Commission or that body ;

(iii) persons who are or have been employed in any undertaking part of which under or by virtue of any of the provisions of this Act or of a scheme or order made thereunder or under any agreement vests in or is transferred to the Commission or any other body, being persons who have been employed in connection with any activities of that undertaking which are transferred to the Commission or that body but who have not been taken into the service of the Commission or that body ;

(iv) persons who are or have been employed in connection with the Caledonian and Crinan Canals or Holyhead Harbour, or by or in connection with the Railway Clearing House ;

(b) for the establishment and administration of pension schemes and pension funds for any of the purposes of the preceding paragraph, for the continuance, amendment, repeal or revocation of existing pension schemes relating in whole or in part to any of the like purposes and of statutory provisions relating thereto and trust deeds, rules or other instruments made for the purposes thereof, for the transfer in whole or in part, or for the extinguishment, of liabilities under any such existing pension schemes, and for the transfer in whole or in part, or winding up, of pension funds held for the purposes of any such existing pension schemes, so, however, that nothing in this paragraph shall be construed as authorising the diversion of any such funds to purposes other than those of the preceding paragraph.



- (c) for making any provision consequential on any such provision as aforesaid, including provision for the dissolution or winding up of bodies, whether incorporated or not, the continued existence whereof is unnecessary having regard to the regulations. [1790]

(2) Where provision is made by any such regulations for the amendment, repeal or revocation of any existing pension scheme or of any statutory provisions relating thereto or any trust deed, rules or other instrument made for the purposes thereof, or for the transfer or extinguishment of any liability under any pension scheme or for the transfer or winding up of any pension fund held for the purposes of any such scheme, the regulations shall be so framed as to secure that persons having pension rights under the scheme, whether such persons as are mentioned in paragraph (a) of the last preceding subsection or not, are not placed in any worse position by reason of the amendment, repeal, revocation, transfer, extinguishment or winding up :

Provided that this subsection shall have effect subject to such limitations as may be prescribed for meeting cases in which, in connection with any provision made by this Act or in anticipation of the making of any such provision, pension rights have been created otherwise than in the ordinary course. [1791]

(3) Regulations made under this section shall not be invalid by reason that in fact they do not secure that persons having pension rights are not placed in any worse position by reason of any such amendment, repeal, revocation, transfer, extinguishment or winding up as is mentioned in the last preceding subsection, but if the Minister is satisfied or it is determined as hereinafter mentioned that any such regulations have failed to secure that result, the Minister shall as soon as may be make the necessary amending regulations.

Any dispute arising between the Minister and any person as to whether or not the said result has been secured by any regulations made under this section shall be referred to a referee or board of referees appointed by the Minister of Labour and National Service after consultation with the Lord Chancellor or, where the proceedings are to be held in Scotland, after consultation with the Secretary of State, for his or their determination thereon. [1792]

(4) Without prejudice to the generality of the preceding provisions of this section, regulations made under this section may contain provisions authorising any person who, being a participant in any pension scheme to which the regulations relate, becomes a member of the Commission or of an Executive being treated as if his service as a member of the Commission or of an Executive, as the case may be, were service in the employment of the Commission, and the pension rights of any such persons resulting from the operation of any such provision shall not be affected by any provision of this Act which requires that the pensions, if any, which are to be paid in the case of members of the Commission or an Executive are to be determined by the Minister with the approval of the Treasury or by the Commission with the approval of the Minister and the Treasury. [1793]

(5) Nothing in this section shall authorise the making of regulations relating to an existing pension scheme which provide for the payment by any person carrying on an undertaking or part of an undertaking in which persons to whom that scheme relates are employed, being an undertaking which, or such part of an undertaking as, has not vested in or been transferred to the Commission or any body by or under this Act or any scheme or order made thereunder—

- (a) of contributions in respect of the services of persons who are no longer employed in that undertaking or part of an undertaking rendered after they cease to be so employed ; or

(b) of contributions in respect of persons who are employed in that undertaking or part of an undertaking in excess of the contributions provided for by the existing pension scheme. [1794]

(6) Nothing in this section, and in particular nothing in subsection (2) thereof, shall be taken to derogate from the power conferred by subsection (4) of section sixty-nine of the National Insurance Act, 1946, to make regulations providing for the modifying or winding up of pension schemes in connection with the passing of that Act. [1795]

(7) Regulations made under this section may contain such supplementary and consequential provisions as the Minister thinks necessary, including provisions as to the manner in which questions arising under the regulations are to be determined and provisions adapting, modifying or repealing statutory provisions. [1796]

(8) Regulations made for the purposes of this section may be made so as to have effect from a date prior to the making thereof, so, however, that so much of any regulations as provides that any provision thereof is to have effect from a date prior to the making thereof shall not place any person other than the Commission in a worse position than he would have been in if the regulations had been made to have effect only as from the date of the making thereof. [1797]

*General note.*—This section is necessarily lengthy and intricate since it has to make provision not only for the establishment of a comprehensive pension scheme or schemes by the Commission, but also for dealing with the great variety of pension schemes both of road haulage undertakings transferred under Part III of the Act and of undertakings to be transferred under schemes or orders made under Part IV.

It is necessary to provide for the continuance, amendment, repeal and revocation of such schemes and the transfer of liabilities thereunder. The section empowers the Minister to make the necessary regulations for these and other purposes. Persons having existing pension rights are protected by the provision that no regulation for amending, repealing or revoking an existing scheme is to place them in a worse position.

*Regulations.*—No regulations under this section had been made up to the time of going to press, but the Minister of Transport stated on the Committee Stage of the Bill that he intended to make such regulations as soon as he had had time to consult with the Commission (see H. of C. Official Report, S.C.B., April 1, 1947, col. 1276).

As to regulations generally, see s. 120, *post*.

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Undertakings transferred under a scheme or order.*—Area road transport undertakings and harbour undertakings may be transferred under the provisions of a scheme (see, respectively, s. 64 (1) (b), *ante*, and in title HARBOURS, DOCKS AND WHARVES, s. 66 (1) (b), *ante*).

An undertaking providing port facilities may, following a declaration of the Transport Tribunal that it is to be transferred, be transferred by order of the Minister (see s. 68 (2) in title HARBOURS, DOCKS AND WHARVES, *ante*).

*Undertakings transferred under an agreement.*—As to the transfer to the Commission of undertakings by agreement, see ss. 2 (2) (f), 4 (4), 7, *ante*. As to the provision to be made for the compensation of officers and servants in such cases, see s. 102, *post*.

*Holyhead Harbour.*—See s. 69, *ante*.

*Executives.*—See s. 5, *ante*.

*National Insurance Act, 1946, s. 69 (4).*—39 Halsbury's Statutes 481.

*Definitions.*—For definitions of "liability," "the Minister," "pension," "pension fund," "pension rights" and "pension scheme," see s. 125 (1), *post*.

## 99. Special provisions as to railway and canal pension funds, etc. [1798]

## 100. Superannuation rights of certain officers transferred to the Ministry of Transport. [1799]

### *Compensation*

## 101. Compensation to officers and servants in connection with transfers.—

(1) The Minister shall by regulations require the Commission to pay, in such cases and to such extent as may be specified in the regulations, compensation—

(a) to officers or servants of any person whose undertaking is transferred to the Commission by Part II of this Act; or

(b) to officers or servants of any person whose undertaking or part of whose undertaking is transferred to the Commission by notice of acquisition given under Part III of this Act; or

- (c) to officers or servants employed in connection with the Caledonian and Crinan Canals or Holyhead Harbour ; or
- (d) to officers or servants employed by a body which, immediately before the date of transfer under Part II of this Act, was completely controlled by one or more of the bodies specified in the Third Schedule to this Act ; or
- (e) to officers or servants employed by or in connection with the Railway Clearing House,

being officers or servants who suffer loss of employment or loss or diminution of emoluments or pension rights or whose position is worsened in consequence—

- (i) in the cases mentioned in paragraphs (a) to (c) of this subsection, of the transfer effected by Part II of this Act, the transfer effected in pursuance of the notice, or the transfer effected by the provisions of this Act relating to the said Caledonian and Crinan Canals and Holyhead Harbour, as the case may be ;
- (ii) in the cases mentioned in paragraph (d) of this subsection, of the transfer effected by Part II of this Act ; and
- (iii) in the cases mentioned in paragraph (e) of this subsection, of the transfer effected by the said Part II or the coming into operation of any provision of a scheme under this Act relating to the Railway Clearing House. [1800]

(2) Different regulations may be made under this section in relation to different classes of persons and different classes of transfers, and any such regulations may be so framed as to have effect as from a date prior to the making thereof, so, however, that so much of any regulations as provides that any provision thereof is to have effect as from a date earlier than the making thereof shall not place any person other than the Commission in a worse position than he would have been in if the regulations had been made to have effect only as from the date of the making thereof. [1801]

(3) Regulations made under subsection (1) of this section—

- (a) may prescribe the procedure to be followed in making claims for compensation, and the manner in which and the persons by whom the question whether any or what compensation is payable is to be determined ; and
- (b) may in particular contain provisions enabling appeals from any determination as to whether any or what compensation is payable to be brought, in such cases and subject to such conditions as may be prescribed by the regulations, to a referee or board of referees appointed by the Minister of Labour and National Service, after consultation with the Lord Chancellor or, where the proceedings are to be held in Scotland, after consultation with the Secretary of State,

and where any such provision is made as is specified in paragraph (b) of this subsection, the decision of the referee or board of referees shall be final. [1802]

(4) No regulations shall be made under this section unless a draft thereof has been laid before Parliament and has been approved by resolution of each House of Parliament. [1803]

(5) Nothing in this section shall be construed as enabling regulations to be made prejudicing the rights of any person under the Third Schedule to the Railways Act, 1921, or Part VII of the London Passenger Transport Act, 1933. [1804]

(6) For the purposes of this section, a body shall be deemed to be completely controlled by one or more other bodies if and only if it is a body with a

share capital and no person other than one or more of the following persons, that is to say—

- (a) the other bodies aforesaid ;
- (b) bodies themselves completely controlled by one or more of those other bodies ; and
- (c) persons holding not more than one share each as subscribers to the Memorandum of Association of the body in question,

has any beneficial interest in any of that share capital which carries voting rights, not being voting rights exercisable only in the event of a default in the payment of dividend, or in any other special circumstances defined in the Articles of Association of the body in question. [1805]

*General note.*—This section imposes on the Minister an obligation to make regulations requiring the Commission to pay compensation to officers and servants of, *inter alia*, a road haulage undertaking transferred under Part III of the Act if they suffer loss of employment or loss or diminution of emoluments or pension rights or if their position is worsened in consequence of the transfer.

As to the provision to be made in like circumstances for compensating officers and servants of undertakings transferred under a scheme or an agreement or under an order of the Minister under s. 68 (3), see s. 102, *infra*.

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Regulations.*—No regulations under this section had been made up to the time of going to press. Regulations under this section, unlike regulations made under other sections of the Act, require to be laid before Parliament in draft and approved by resolution of each House (see sub-s. (4), *ante*, and s. 120, *post*).

This is an example of the affirmative procedure to which the provisions of ss. 4 to 7 of the Statutory Instruments Act, 1946 (39 Halsbury's Statutes 785 *et seq.*), do not apply.

*Holyhead Harbour.*—See s. 69, *ante*.

*Referee or board of referees.*—The Arbitration Acts, 1889 to 1934 (1 Halsbury's Statutes 453, 469 ; 23 Halsbury's Statutes 4 ; 27 Halsbury's Statutes 27), do not apply to proceedings before a referee or board of referees under this section, see s. 104, *post*. As to the payment of fees and allowances to a referee or member of a board of referees, see s. 103, *post*.

*Railways Act, 1921, Sched. III.*—14 Halsbury's Statutes 374.

*London Passenger Transport Act, 1933, Part VII.*—26 Halsbury's Statutes 807-818.

*Definitions.*—For definitions of "dividend," "emoluments," "the Minister," "officer" and "pension rights," see s. 125 (1), *post*.

**102. Compensation to officers and servants in other cases.**—(1) The Minister shall not regard as satisfactory for the purposes of sub-paragraph (1) of paragraph 1 of the Eighth Schedule to this Act any scheme which provides for the transfer of the whole or any part of any undertaking, and shall not give his approval to any agreement providing for the transfer of the whole or any part of an undertaking which, under any provision of this Act, requires his approval, unless he is satisfied that appropriate provision has been or will be made by the scheme or agreement for the payment by the transferee in the appropriate cases and to the appropriate extent of compensation to officers and servants who suffer loss of employment or loss or diminution of emoluments or pension rights or whose position is worsened in consequence of the transfer in question. [1806]

(2) Where under any provision of this Act an agreement for the transfer of an undertaking or part of an undertaking to the Commission can be made without the approval of the Minister, the agreement shall contain such provisions in relation to the matters specified in subsection (1) of this section as the Minister may by general direction to the Commission require. [1807]

(3) Any order by the Minister giving effect to the transfer to the Commission or any other body of the whole or part of a canal carrier undertaking, or an undertaking providing port facilities, with respect to which a declaration has been made under the provisions of this Act by the Transport Tribunal, shall, notwithstanding any power of the Minister to except provisions of this Act from application to such a transfer, include such provision as appears to him appropriate in relation to the matters specified in subsection (1) of this section. [1808]

*Satisfactory for the purposes of Sched. VIII, paragraph 1 (1).*—Apart from Railway Clearing House schemes, which are outside the scope of this volume, schemes under the Act are of two sorts :

- (i) area road transport schemes ; and
- (ii) schemes as to harbours,

neither of which have effect until embodied in an order made by the Minister in accordance with Sched. VIII, *post* (s. 63 (3), *ante*, and s. 66 (8), in title HARBOURS, DOCKS AND WHARVES, *ante*).

Paragraph 1 (1) of Sched. VIII provides that where a scheme submitted to the Minister appears to him to make satisfactory provision with respect to the matters dealt with in the scheme, he is to prepare a draft order embodying the scheme. Accordingly, sub-s. (1), *ante*, by providing that the Minister is not to regard as satisfactory for the purposes of the said paragraph 1 (1), *inter alia*, any scheme which provides for the transfer of an undertaking unless he is satisfied that appropriate provision has been or will be made for compensating officers and servants as set out in the subsection, has the effect of making it obligatory to include such provision in any such scheme.

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Agreements requiring Minister's approval.*—See s. 4 (4), *ante*. As to the acquisition of undertakings by the Commission by agreement, see ss. 2 (2) (f) and 7, *ante*.

*Directions.*—In addition to the power of giving a general direction to the Commission conferred on the Minister by sub-s. (2), *ante*, powers of giving directions are also conferred by ss. 4, 6 (8), 63 (4), 66 (9), 71 (4), 92 (2) (b), 94 (3), (5), *ante*. See also s. 85, *ante*.

*Declaration made by the Transport Tribunal.*—As to an order of the Minister giving effect to the transfer of an undertaking providing port facilities with respect to which a declaration has been made by the Transport Tribunal, see s. 68 in title HARBOURS, DOCKS AND WHARVES, *ante*.

*Definitions.*—For definitions of “canal carrier undertaking,” “emoluments,” “the Minister,” “officer,” “pension rights” and “port facilities,” see s. 125 (1), *post*.

**103. Fees and allowances on references under Part VII to referees.**—The Minister of Labour and National Service may, with the consent of the Treasury, pay, out of moneys provided by Parliament,—

- (a) to any referee or to the members of any board of referees appointed by him under any provision of this Part of this Act or under any such provision of a scheme or agreement as is referred to in subsection (1) of the last preceding section or under any such provision of an order as is mentioned in subsection (3) of the last preceding section such fees and allowances as he may with the consent of the Treasury determine ; and
- (b) to persons giving evidence before any such referees or board such allowances as he may with the consent of the Treasury determine.

[1809]

*Appointed under any provision of this Part of this Act.*—See s. 101 (3) (b), *ante*.

**104. Arbitration Acts do not apply to proceedings before referees or boards of referees.**—Nothing in the Arbitration Acts, 1889 to 1934, shall be construed as applying to any proceedings before a referee or board of referees appointed under this Part of this Act by the Minister of Labour and National Service. [1810]

*Arbitration Acts, 1889 to 1934.*—The Arbitration Acts, 1889 to 1934, are the Arbitration Act, 1889 (1 Halsbury's Statutes 453) ; the Arbitration Clauses (Protocol) Act, 1924 (1 Halsbury's Statutes 469) ; the Arbitration (Foreign Awards) Act, 1930 (23 Halsbury's Statutes 4) ; and the Arbitration Act, 1934 (27 Halsbury's Statutes 27).

*Appointed under this Part of the Act.*—See s. 101 (3) (b), *ante*.

## PART VIII

### SETTLEMENT OF QUESTIONS ARISING IN CONNECTION WITH COMPULSORY ACQUISITIONS

**105. Establishment of Transport Arbitration Tribunal.**—(1) For the purpose of performing the functions specified in this Part of this Act, there shall be established a tribunal to be called “The Transport Arbitration Tribunal” (in this Act referred to as the arbitration tribunal). [1811]

(2) The arbitration tribunal shall consist of—

- (a) one member, to be appointed by the Lord Chancellor, who shall be a person of legal experience and shall, subject to the provisions of this subsection, be the president of the tribunal ;

- (b) one member, to be appointed by the Lord President of the Court of Session, who shall be a person of legal experience in Scotland ; and
- (c) two members, to be appointed by the Lord Chancellor, of whom one shall be a person of experience in business and one shall be a person of experience in finance :

Provided that the person appointed under paragraph (a) of this subsection shall not act in relation to any proceedings which, under the provisions of this Part of this Act, are to be treated as Scottish proceedings ; and the person appointed under paragraph (b) of this subsection shall only act in relation to such proceedings and, in relation thereto, shall act as president of the tribunal. [1812]

(3) The members of the arbitration tribunal shall hold office for such period as may be determined at the time of their respective appointments and shall be eligible for reappointment :

Provided that—

- (a) a member may at any time by notice in writing to the Lord Chancellor, or the Lord President of the Court of Session, as the case may be, resign his office ;
- (b) the Lord Chancellor, or the Lord President of the Court of Session, as the case may be, may declare the office of any member vacant on the ground of incapacity to perform the duties of the office or misbehaviour ;
- (c) if any member becomes bankrupt or makes an arrangement with his creditors, his office shall thereupon become vacant. [1813]
- (4) If any member of the arbitration tribunal becomes, by reason of illness or other infirmity, temporarily incapable of performing the duties of his office, the Lord Chancellor, or the Lord President of the Court of Session, as the case may be, shall appoint some other fit person to discharge his duties for any period not exceeding six months at one time, and the person so appointed shall, during that period, have the same powers as the person in whose place he is appointed. [1814]
- (5) The arbitration tribunal may, at any stage in any proceedings before them, refer the proceedings for hearing and determination to a person or persons appointed by them for the purpose, and where any proceedings are so referred, the person or persons to whom the proceedings are referred shall be deemed to constitute the tribunal for the purposes of those proceedings and shall have all the powers and duties of the tribunal in relation to the hearing and determination thereof. [1815]

*General note.*—The Lord Chancellor has appointed under this section the following persons as the first members of the Transport Arbitration Tribunal : Mr. C. Montgomery White, K.C. (president), Mr. B. G. Catterns and Sir Russell Kettle.

#### 106. Procedure and enforcement of orders of arbitration tribunal.—

(1) The arbitration tribunal shall be a court of record and have an official seal, which shall be judicially noticed, and any order of the tribunal shall be enforceable as if it were an order of the High Court. [1816]

(2) The provisions of the Arbitration Acts, 1889 to 1934, with respect to—

- (a) the administration of oaths and the taking of affirmations ; and
- (b) the correction in awards of mistakes and errors ; and
- (c) the summoning, attendance and examination of witnesses and the production of documents ; and
- (d) the costs of the reference and award,

shall, with any necessary modifications, apply in respect of any proceedings before the arbitration tribunal, but save as aforesaid the said Acts shall not apply to any such proceedings. [1817]

(3) The arbitration tribunal may, and if so ordered by the Court of Appeal, shall, state in the form of a special case for determination by the Court of Appeal any question of law which may arise before them. [1818]

(4) The Minister shall have a right to be heard in all proceedings before the arbitration tribunal. [1819]

(5) Subject to the provisions of this section, the procedure in or in connection with any proceedings before the arbitration tribunal shall be such as may be determined by rules to be made by the tribunal with the approval of the Lord Chancellor. [1820]

(6) In relation to proceedings which, under this Part of this Act, are to be treated as Scottish proceedings, this section shall have effect subject to the following modifications—

(a) for subsections (2) and (3), there shall be respectively substituted the following subsections—

“(2) The arbitration tribunal shall have the like powers for securing the attendance of witnesses and the production of documents, and with regard to the examination of witnesses on oath and the awarding of expenses as if the arbitration tribunal were an arbiter under a submission.

(3) The arbitration tribunal may, and if so directed by the Court of Session shall, state a case for the opinion of that Court on any question of law arising in the proceedings, and the decision of that Court thereon shall be final unless the Court of Session or the House of Lords give leave to appeal to the House of Lords, which leave may be given on such terms as to expenses or otherwise as the Court of Session or the House of Lords may determine.

(b) in subsection (5), for the reference to the Lord Chancellor there shall be substituted a reference to the Secretary of State,

and, in the case of any such proceedings, the tribunal shall, except in so far as for special reasons they think fit not to do so, sit in Scotland. [1821]

*Arbitration tribunal.*—The Transport Arbitration Tribunal (see s. 105 (1), *ante*).

*Arbitration Acts, 1880 to 1934.*—As to the Acts comprised in this set of Acts, see note to s. 104, *ante*.

*Rules of Procedure.*—Under sub-s. (5), *supra*, the arbitration tribunal with the approval of the Lord Chancellor have made the Transport Arbitration Tribunal Rules, 1947, S.R. & O., 1947, No. 2271/L.30, for regulating the procedure in or in connection with proceedings before the Tribunal.

*Definition.*—For definition of “the Minister,” see s. 125 (1), *post*.

**107. Staff and expenses of arbitration tribunal.**—(1) The arbitration tribunal may, subject to the consent of the Treasury as to numbers, appoint such officers and servants as they consider necessary for assisting them in the proper execution of their duties. [1822]

(2) There shall be paid to the members of the arbitration tribunal and to any such officer or servant as aforesaid such remuneration (whether by way of salaries, fees or allowances) as the Minister may, with the approval of the Treasury, determine. [1823]

(3) There shall be paid to any person to whom proceedings are referred by the arbitration tribunal under the preceding provisions of this Part of this Act for hearing and determination such remuneration as the tribunal may, with the approval of the Treasury, determine. [1824]

(4) Any such remuneration as aforesaid and any other expenses of the arbitration tribunal shall be defrayed in the first instance by the Minister out of moneys provided by Parliament but the amounts from time to time so paid by the Minister shall be repaid on demand to the Minister by the Commission. [1825]

*Arbitration tribunal.*—The Transport Arbitration Tribunal (see s. 105 (1), *ante*).

*Person to whom proceedings are referred.*—See s. 105 (5), *ante*.

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Definitions.*—For definitions of “the Minister” and “officer,” see s. 125 (1), *post*.



**108. Agreements as to amount of compensation.**—(1) Subject to the provisions of this Part of this Act, no sum shall be paid to any person by the Commission by way of or on account of compensation under Part III of this Act except in pursuance of an agreement with that person confirmed by the arbitration tribunal under this section or of an order of that tribunal under the next succeeding section :

Provided that the confirmation of the tribunal shall not be required in the case of an agreement for the payment of compensation to any person if the total amount of the compensation payable to him thereunder does not exceed twenty thousand pounds. [1826]

(2) The arbitration tribunal shall not confirm any agreement which requires their confirmation unless they are satisfied either—

- (a) that the relevant facts have been fully investigated and the amount agreed to be paid is believed by the parties to the agreement to represent, with as much accuracy as is possible, the amount required to be paid on a strict application of the relevant provisions of this Act ; or
- (b) that the amount agreed to be paid represents a reasonable estimate of the amount which would ultimately be found to be payable if the relevant facts were fully ascertained and the relevant provisions of this Act strictly applied thereto, and that further investigation of the facts would cause undue delay or expense ; or
- (c) that the amount to be paid represents a reasonable compromise of a disputed claim :

Provided that where the arbitration tribunal are not so satisfied as aforesaid but would have been so satisfied if a different sum had been fixed by the agreement, they may direct that the agreement shall have effect as if such sum as the tribunal may specify were substituted in the agreement for the sum therein mentioned, and where such a direction is given the like consequences shall follow as would have followed if the agreement had originally been made with that substitution and the agreement had then been confirmed by the tribunal. [1827]

(3) Where the compensation to which any such agreement as aforesaid relates arises out of or in connection with the transfer of an undertaking having its principal place of business in Scotland, the proceedings shall, subject to the provisions of this Part of this Act, be treated as Scottish proceedings. [1828]

*General note.*—While this section relates only to the payment of compensation under Part III of the Act, its provisions may, with or without modifications, be incorporated in relation to transfers in schemes or orders under Part IV (see s. 64 (1) (g), *ante* ; and ss. 66 (3) (i), 68 (3), in title HARBOURS, DOCKS AND WEARVES, *ante* ; and see s. 113, *post*).

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Compensation under Part III.*—See ss. 47-49, 55, *ante*. Compensation under Part III is payable in respect of the acquisition of long distance road haulage undertakings by the Commission in accordance with that Part of the Act.

*Arbitration tribunal.*—The Transport Arbitration Tribunal (see s. 105 (1), *ante*).

*Compensation not exceeding £20,000.*—Where compensation does not exceed £20,000, £2,000 (or such lesser sum as is payable) may, if the payee so requires, be satisfied in cash ; otherwise all compensation under Part III is to be satisfied by the issue of British transport stock (see s. 48 (3), *ante*).

**109. Jurisdiction of arbitration tribunal as to disputes.**—(1) Subject to the provisions of this Part of this Act, the arbitration tribunal shall have sole jurisdiction to determine any dispute to which the Commission is a party as to any of the following questions that is to say—

- (a) the question whether any or what sum is payable to any person by way of compensation or interest on compensation in respect of the transfer to the Commission, under any of the provisions of this Act, of an undertaking, a part of an undertaking, any property or any hire purchase agreement ;

- (b) whether any or what sum is repayable to the Commission in respect of an overpayment of any such compensation as aforesaid or of interest thereon ;
- (c) whether the acquisition of any property, or the making or variation of any agreement or contract, with respect to which a notice of disclaimer is given by the Commission under any provision of this Act, was or was not reasonably necessary for the purposes mentioned in that provision, or was or was not an act of unreasonable imprudence on the part of the body or person therein mentioned ;
- (d) whether any such notice of disclaimer is in any other respect invalid ; or
- (e) any other question required by any provision of this Act to be determined by the arbitration tribunal. [1829]

(2) Where a dispute arises out of or in connection with the transfer of an undertaking having its principal place of business in Scotland or of a railway wagon the owner of which has his principal place of business in Scotland, the proceedings before the tribunal in respect of the dispute shall, subject to the provisions of this Part of this Act, be treated as Scottish proceedings. [1880]

*General note.*—As to the application of this section to schemes and orders under Part IV of the Act, see s. 64 (1) (g), *ante* ; ss. 66 (3) (i), 68 (3), in title HARBOURS, DOCKS AND WHARVES, *ante* ; and s. 113, *post*.

*Arbitration tribunal.*—The Transport Arbitration Tribunal (see s. 105 (1), *ante*).

*Sole jurisdiction.*—Note, however, the jurisdiction of the Court of Appeal in regard to questions of law (s. 106 (3), *ante*). Note also, the power of the Arbitration Tribunal to refer proceedings for determination to a person or persons appointed by them (s. 105 (5)).

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*). But note the provisions of s. 113, *post*.

*Any provisions of this Act.*—This includes a reference to a provision as applied by any scheme or order made under any other provision (see s. 113, *post*).

*Amount of compensation.*—As to the amount payable by way of compensation on the acquisition of a road haulage undertaking under Part III of the Act, see s. 47, 49, 50 (2), (3), *ante* ; as to interest on compensation, see s. 48 (4), *ante*.

*Overpayment of compensation.*—As to overpayment of compensation, see s. 48 (2), *ante*.

*Notice of disclaimer.*—As to the giving of a notice of disclaimer, see s. 46, *ante*.

*Any other question to be determined by the arbitration tribunal.*—See ss. 40 (3), (4), 41, 54 (5), 55 (2), (4), 64 (4) (b), *ante*.

*Definitions.*—For definitions of “ hire purchase agreement ” and “ property,” see s. 125 (1), *post*.

**110. Powers of arbitration tribunal where delay in settlement of compensation.**—(1) Subject to the provisions of this Part of this Act, where, under any provision of this Act, an undertaking or part of an undertaking or any property or any rights under any contract or agreement are transferred to the Commission and it appears to the arbitration tribunal on or after the expiration of twelve months from the date of transfer that the compensation payable by reason of the transfer has not been entirely and finally settled, the arbitration tribunal may require the Commission to bring before the tribunal all questions outstanding as to the compensation so payable, and the Commission shall as soon as may be submit those questions to the tribunal accordingly. [1831]

(2) Where any question is submitted under this section to the arbitration tribunal, the tribunal may determine the amount of compensation which is to be payable to any person, and for that purpose may require the Commission or any other person affected to give to the tribunal such information as the tribunal may require, and the tribunal may, if they think fit and are satisfied that further investigation of the facts would cause undue delay or expense, fix, as the amount to be paid, a sum estimated by them to be reasonably equivalent to the amount which would ultimately be found to be payable if the relevant facts were fully ascertained and the relevant provisions of this Act strictly applied thereto. [1832]

(3) The Commission shall, so far as may be necessary for the purpose of

enabling the arbitration tribunal to exercise their functions under the preceding provisions of this section, keep the tribunal informed as to any acquisitions made by them under any of the provisions of this Act. [1833]

(4) Where the undertaking has its principal place of business in Scotland or the property or rights are situate in Scotland, the proceedings of the tribunal shall, subject to the provisions of this Part of this Act, be treated as Scottish proceedings. [1834]

*General note.*—As to the application of the provisions of this section to schemes and orders made under Part IV of the Act, see s. 64 (1) (*g*), *ante*; ss. 66 (3) (*i*), 68 (3), in title HARBOURS, DOCKS AND WHARVES, *ante*; and s. 113, *infra*.

*Any provision of this Act.*—This includes a reference to a provision as applied by any scheme or order made under any other provision (see s. 113, *infra*).

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*). But note the provision of s. 115, *infra*.

*Arbitration tribunal.*—The Transport Arbitration Tribunal (see s. 105 (1), *ante*).

*Date of transfer.*—As to the date of transfer under a notice of acquisition, see s. 44, *ante*.

*Subject to the provisions of this Part of this Act.*—This refers to s. 111 (2), *infra*.

**111. Transfer of proceedings from England to Scotland and from Scotland to England.**—(1) If, at any stage in any proceedings before the arbitration tribunal which would not otherwise fall to be treated as Scottish proceedings, the tribunal are satisfied that, by reason of the fact that questions of Scottish law arise or for any other reason, the proceedings ought thereafter to be treated as Scottish proceedings, the tribunal may order that they shall thereafter be so treated, and the provisions of this Part of this Act shall have effect accordingly. [1835]

(2) If, at any stage in any proceedings before the arbitration tribunal which would otherwise be treated as Scottish proceedings, the tribunal are satisfied that, by reason of the fact that questions of English law arise or for any other reason, the proceedings ought no longer to be treated as Scottish proceedings, they may make an order that the proceedings shall thereafter not be treated as Scottish proceedings and the provisions of this Part of this Act shall have effect accordingly. [1836]

*Arbitration tribunal.*—The Transport Arbitration Tribunal (see s. 105 (1), *post*).

**112. Special provisions as to officers and servants.**—Nothing in the preceding provisions of this Part of this Act shall apply to any compensation payable under regulations made under Part VII of this Act for providing compensation to officers or servants. [1837]

*Officers.*—For definition of “officers,” see s. 125 (1), *post*.

**113. Application to schemes.**—Any reference in the preceding provisions of this Part of this Act to any provision of this Act includes a reference to that provision as applied, with or without modifications, by any scheme or order made under any other provision thereof, and, except so far as the contrary is expressly provided by the scheme or order, any reference in this Part of this Act to the Commission shall, in relation to a scheme or order providing for a transfer to a body other than the Commission, be deemed, in relation to that transfer, to include a reference to that body. [1838]

*General note.*—As to the application of provisions of this Part of the Act by schemes or orders made under Part IV, see, in relation to area road transport schemes, s. 64 (1) (*g*), *ante*, and in relation respectively to harbour schemes and to orders giving effect to the transfer of undertakings providing port facilities, see ss. 66 (3) (*i*), 68 (3) in title HARBOURS, DOCKS AND WHARVES, *ante*.

*Sidenote.*—In the Arrangement of Sections, *ante*, the sidenote appears as “Application to schemes or orders.”

## PART IX

### MISCELLANEOUS AND GENERAL

**114. Additional compensation to local authorities.**—(1) Where, under Part II of this Act or under any scheme made under Part IV of this Act, any

undertaking to which this section applies is transferred from a local authority to the Commission or to a body constituted or specified under such a scheme, the Commission or that body, as the case may be, shall pay to the authority whose undertaking is transferred the appropriate sum as compensation under this section. [1839]

(2) The undertakings to which this section applies are—

- (a) any undertaking of a local authority which falls to be transferred under Part II of this Act ;
- (b) any undertaking which, at the passing of this Act, is being carried on by a local authority, being an undertaking which could be transferred to the Commission or to some other body as aforesaid under a scheme under Part IV of this Act ;

and the expression “ the appropriate sum ” means, in relation to any undertaking to which this section applies, such sum as may be specified in relation to that undertaking by regulations made by the Minister, so, however, that the total of all the appropriate sums for undertakings the activities whereof consist wholly or partly of operating passenger road transport services does not exceed two and a half million pounds and the total of all the appropriate sums for other undertakings does not exceed two hundred thousand pounds. [1840]

(3) This section shall apply in relation to a transfer of a part of an undertaking to which this section applies as it applies in relation to the whole of that undertaking, except that the sum payable by way of compensation under this section shall be such part of the appropriate sum as may be determined by the Minister ; and the total of the sums so determined by the Minister in relation to parts of an undertaking shall not exceed the appropriate sum for the whole of that undertaking. [1841]

(4) The compensation payable under this section shall be payable in cash and shall be in addition to any compensation payable under any provision of this Act, or under any other provision of this Act as applied by a scheme ; and the references in Part IV of this Act to provisions of this Act relating to compensation shall be deemed not to include references to this section. [1842]

(5) In this section, the expression “ local authority ” includes the council of a county district. [1843]

*General note.*—The only provision made in the original Bill for the payment of compensation to a local authority in respect to the transfer of an undertaking belonging to it, was that made by s. 25, *ante*. The present section, however, together with s. 23 of the Electricity Act, 1947 (see title ELECTRICITY SUPPLY, *ante*), which passed through Parliament contemporaneously with the present Act, were inserted by Amendments moved by the Government in order to provide additional compensation to local authorities in respect of severance and increase of overhead expenses resulting from the acquisition of their transport and electricity undertakings respectively.

The amount of this additional compensation, under the Electricity Act, 1947, s. 23, is £5,000,000, and under the present section £2,500,000 in respect of road passenger transport undertakings and £200,000 in respect of harbour undertakings.

Speaking on the Committee Stage of the Bill with regard to these amounts, the Minister of Transport said :

“ The problem that has confronted me has been a little more difficult [than that confronting the Minister of Fuel and Power, the Minister in charge of the Electricity Bill], because the question of the transfer or treatment of the transport undertakings of local authorities would not arise [subject to one exception, however ; see notes to s. 25, *ante*] until area schemes were initiated by the Commission and ultimately considered and determined by ministerial order. Nevertheless, as a result of discussions with those who represent the local authorities, we have reached . . . agreement upon a transport sum. As we calculate the capital expenditure, the gross receipts of the transport undertakings of local authorities as compared with electricity undertakings are only about half, or half the capital expenditure represented. . . .

“ This sum of £2,500,000 has been arrived at on the basis of five or six years' purchase of one per cent. of the gross receipts of the local authorities' passenger transport premises. The sum of £200,000 is for municipal dock compensation. . . . It has been arrived at on a similar principle. It is considered that it will be sufficient to taper off and to enable the local authorities to make the necessary adjustments.”

The Minister of Transport pointed out that these amounts were global amounts covering payments to all local authorities, and that it would not be possible to determine the "appropriate sum" to be paid to a particular authority or the method of payment until the scheme affecting that authority had been made (436 H. of C. Official Report 1635, 1766).

*Local authority.*—This means the council of a county, the Common Council of the City of London, the council of a county borough or the council of a county district (see s. 125 (1), *post*, and sub-s. (5), *ante*).

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Passing of the Act.*—August 6, 1947.

**115. Right of pre-emption for local authorities in certain cases.**—(1) Where, on the occasion of the acquisition by the Commission, whether by agreement or otherwise, of the whole or any part of any undertaking of any local authority, the Commission acquire any land theretofore held by the local authority for the purposes of that undertaking, the local authority shall, for a period of ten years from the date of the acquisition of the land, have the right of pre-emption conferred by the subsequent provisions of this section.

[1844]

(2) If the Commission, within the said period of ten years, desire to dispose, whether absolutely or for a term of years, of any of that land as being land not required by them for the discharge of their duties under this Act, they shall before disposing of it give to the local authority at least three months' notice, stating whether they desire to dispose of it absolutely and, if not, stating the term of years for which they desire to dispose of it. [1845]

(3) Where the local authority receive a notice under subsection (2) of this section and notify the Commission, before the expiration of the period of three months from the date of the Commission's notice, that they desire to acquire the land either absolutely or for the term of years specified in the Commission's notice, as the case may be, they shall have the right and be under an obligation to acquire that land, on such terms as may be agreed between the Commission and the authority or, in default of agreement, as may be determined by arbitration to be fair and reasonable having regard to all the circumstances of the case. [1846]

(4) The right of pre-emption conferred upon the local authority by this section shall be deemed to be an estate contract within the meaning of section ten of the Land Charges Act, 1925, and that Act and the Land Registration Act, 1925, shall have effect accordingly. [1847]

(5) In this section, the expression "local authority" includes the council of a county district. [1848]

*General note.*—This section, like the preceding section, was inserted by Government Amendment during the Committee Stage of the Bill. It gives local authorities a right of pre-emption in regard to any land acquired from the authorities by the British Transport Commission of which within a period of ten years from acquisition the Commission wish to dispose.

*The Commission.*—The British Transport Commission (s. 1 (1), *ante*).

*Local authority.*—This means the council of a county, the Common Council of the City of London, the council of a county borough, or the council of a county district (see s. 125 (1), *post*, and sub-s. (5), *supra*).

*Land Charges Act, 1925, s. 10.*—15 Halsbury's Statutes 531. That section defines an "estate contract" as any contract by an estate owner or by a person entitled at the date of the contract to have a legal estate conveyed to him to convey or create a legal estate, including a contract conferring either expressly or by statutory implication a valid option of purchase, a right of pre-emption or any other like right.

The effect of providing that the right of pre-emption conferred by the present section shall be deemed to be an estate contract, and that the Land Registration Act, 1925 (15 Halsbury's Statutes 434), is to have effect accordingly, is that in the case of unregistered land the right becomes registrable as a land charge in the register of land charges under the said s. 10, and in the case of registered land, becomes capable of being protected by the registration of an entry under s. 59 of the Land Registration Act, 1925 (15 Halsbury's Statutes 469).

## **116. Treatment of Travel Agencies. [1849]**

**117. Renaming of Traffic Commissioners and licensing authorities.**—The Traffic Commissioners appointed under Part IV of the Road Traffic Act, 1930, for any area shall be known as "The Licensing Authority for Public Service Vehicles", and the licensing authority for the purposes of Part I of the Road

and Rail Traffic Act, 1933, for any area shall be known as "The Licensing Authority for Goods Vehicles", and references in this Act or in any other statutory provision shall be construed accordingly. [1850]

*General note.*—The purpose of this section is to avoid confusion arising from the similarity in the titles of the Traffic Commissioners and the Commission.

*Traffic Commissioners under Part IV of the Road Traffic Act, 1930.*—23 Halsbury's Statutes 654 *et seq.* The Traffic Commission consist of a body of three commissioners appointed by the Minister of Transport under s. 63 of the Road Traffic Act, 1930 (23 Halsbury's Statutes 656), for each of the traffic areas specified in Sched. III to that Act. They have the duty of issuing licences under Part IV of that Act and of exercising such other powers and performing such other duties as are conferred or imposed on them by or in pursuance of that Act, and subject as aforesaid act under the general directions of the Minister (see the Road Traffic Act, 1930, s. 63 (1), *supra*).

*Licensing authority for purposes of the Road and Rail Traffic Act, 1933, Part I.*—26 Halsbury's Statutes 872 *et seq.* The licensing authority for the purposes of Part I of the Road and Rail Traffic Act, 1933, for any area, is in accordance with s. 4 (1) of that Act (26 Halsbury's Statutes 876), the person who is the chairman of the traffic commissioners for any traffic area within the meaning of the Road Traffic Act, 1930 (see preceding note), including any person for the time being appointed by the Minister of Transport to act as deputy to the chairman.

By s. 4 (2) of the Act of 1933 that section is to have effect as respects the Metropolitan traffic area with the substitution of a reference to the traffic commissioner for that area for the reference to the chairman of the commissioners.

*Definition.*—For definition of "statutory provision," see s. 125 (1), *post*.

### 118. Special provisions as to River Lee. [1851]

**119. Miscellaneous regulation-making powers.**—Without prejudice to any other provision of this Act providing for the making of regulations, the Minister may make regulations—

- (a) prescribing anything which under this Act is to be prescribed;
- (b) specifying the manner in which any documents required or authorised by this Act to be served on any person are to be so served;
- (c) making provision for the safe custody and redelivery or disposal of any property found on or in any premises, vessels or vehicles belonging to the Commission and fixing the charges to be made by the Commission in respect thereof;
- (d) providing for the registration of the title of the Commission to property vesting in them under or by virtue of any provision of this Act, being property of a kind subject to provision for the registration of title thereto;
- (e) authorising the Commission or any person the whole or any part of whose undertaking has been or is to be the subject of a transfer under this Act to the Commission to inspect property or inspect or make extracts from or take copies of documents in the custody or under the control of that person or of the Commission, as the case may be.

[1852]

*General note.*—As to the procedure for making regulations, see s. 120, *infra*. See also s. 61, *ante*.

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Definitions.*—For definitions of "the Minister" and "property," see s. 125 (1), *post*.

**120. Other provisions as to orders and regulations.**—(1) Any order made under this Act by the Minister may be revoked or varied by a subsequent order made in the like manner and subject to the like conditions. [1853]

(2) Any regulations made under this Act by the Minister or by any other Minister of the Crown or government department, other than those made under section one hundred and one of this Act, shall be laid before Parliament immediately after they are made, and, if either House, within a period of forty days after the regulations are so laid before it, resolves that the regulations be annulled, the regulations shall thereupon cease to have effect, but without prejudice to the validity of anything previously done thereunder or to the making of new regulations. [1854]

(3) In reckoning for the purposes of the last preceding subsection any



such period of forty days, no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days. [1855]

(4) Notwithstanding anything in subsection (4) of section one of the Rules Publication Act, 1893, regulations and orders made under this Act shall be deemed not to be, or to contain, statutory rules to which that section applies. [1856]

*General note.*—As to regulations see also ss. 61, 119, *ante*.

*Regulations.*—The Statutory Instruments Act, 1946, s. 1 (2) (39 Halsbury's Statutes 784) provides that where by any Act passed before the commencement of that Act power to make statutory rules within the meaning of the Rules Publication Act, 1893 (18 Halsbury's Statutes 1016), was conferred on any rule-making authority, any document by which that power is exercised after the commencement of the Act of 1946 shall, save as is otherwise provided by regulations made under that Act, be known as a "statutory instrument" and the provisions of that Act shall apply thereto accordingly. Statutory rules within the meaning of the Rules Publication Act, 1893, include, in accordance with s. 4 of that Act, regulations made under any Act of Parliament by a government department.

Accordingly, regulations under this section made after the Act of 1946 was brought fully into force on January 1, 1948 (see S.I. 1948 No. 3), require to be laid before Parliament in accordance with s. 4 of that Act in substitution for the corresponding provisions of this section and the provision of s. 5 of that Act for annulment in pursuance of resolution of either House will be substituted for the corresponding provisions of the present section.

*Rules Publication Act, 1893, s. 1 (4).*—18 Halsbury's Statutes 1016. The effect of providing that regulations and orders made under the Act are to be deemed not to be, or to contain, statutory rules within the meaning of the Rules Publication Act, 1893, s. 1 (4), *supra*, is that notice of a proposal to make any such regulations or orders will not need to be published in the London Gazette in accordance with sub-s. (1) of that section.

**121. Penalties.**—(1) If any person, in giving any information, making any claim or giving any notice for the purposes of any provision of this Act, or any regulation or order made thereunder, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, he shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding one hundred pounds or to both such imprisonment and such fine, or on conviction on indictment to imprisonment for a term not exceeding two years or to a fine not exceeding five hundred pounds, or to both such imprisonment and such fine. [1857]

(2) If any person contravenes any provision of this Act or any regulation or order made thereunder and no other penalty is provided in relation to the contravention, he shall be liable on summary conviction to a fine not exceeding one hundred pounds and, if the contravention in respect of which he is so convicted is continued after the conviction, he shall be guilty of a further offence and liable in respect thereof on summary conviction to a fine not exceeding five pounds for each day on which the contravention is so continued. [1858]

(3) Where any offence against this Act or any regulation or order made thereunder has been committed by a body corporate, every person who at the time of the commission of the offence was a director, general manager, secretary or other similar officer of the body corporate, or was purporting to act in any such capacity, shall be deemed to be guilty of that offence unless he proves that the offence was committed without his consent or connivance, and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and in all the circumstances. [1859]

*Sub-s. (3).*—Sub-s. (3), *supra*, which deals with offences committed by bodies corporate is common form in many recent Acts; see, for example, the Coal Industry Nationalisation Act, 1946, s. 59 (2) (39 Halsbury's Statutes 297), the Civil Aviation Act, 1946, s. 47 (2) (39 Halsbury's Statutes 827), and the Electricity Act, 1947, s. 62 (2) (see title *ELECTRICITY SUPPLY, ante*).

It may be noted, however, that, unlike all the above-mentioned Acts, the present Act does not make the consent of the Minister or the Director of Public Prosecutions necessary to the institution of proceedings for an offence.

The effect of the subsection is that in prosecutions of directors and certain other officers of a body corporate for offences committed by the body corporate against this Act or any regulation or order made thereunder the onus of proof is on the director or other officer. In



order to establish his innocence he must prove not only that the offence was committed without his consent or connivance but also that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions as a director and in all the circumstances.

The burden of proof under this subsection may be contrasted with the burden of proof placed on directors for offences against certain provisions of the Companies Acts, 1929 and 1947 (2 Halsbury's Statutes 775; 10 & 11 Geo. 6, c. 47), by s. 20 of the 1947 Act under which, to escape liability for fine or imprisonment, it is necessary for a director to show that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the provision was complied with and was in a position to discharge that duty.

An Amendment was moved on the Committee Stage of the Bill in the House of Lords to bring the provisions of sub-s. (3) into line with s. 20 of the Companies Act, 1947, it being argued that it was necessary to protect the director who had been appointed for his technical qualifications and who, acting on the advice of a competent accountant, consented to some act of a financial nature about which he knew very little.

The Lord Chancellor, in opposing the Amendment (which was eventually withdrawn), said:

"If a director is appointed for some particular purpose which has no relation to the offence having regard to his functions and in all the circumstances he would, without the slightest difficulty, prove that he was not to blame. . . . The judges would say that a man in that capacity was quite blameless and would discharge the onus. There are unfortunately some directors of bodies corporate who are not very anxious to prevent offences and are sometimes anxious to shelter behind the body corporate.

"In these circumstances I suggest to your Lordships that this clause hallowed now by long usage . . . is the right way of dealing with this matter and it will prevent a body corporate from being able to drive a coach-and-four through the Act" (149 H. of L. Official Report 371).

*Definitions.*—For definitions of "contravention" and "director," see s. 125 (1), *post*.

**122. Power of Minister as to inquiries.**—The Minister may hold inquiries for the purposes of his powers and duties under this Act as if those purposes were purposes of the Ministry of Transport Act, 1919, and section twenty of that Act shall apply accordingly. [1860]

*General note.*—The Minister must cause a public local inquiry to be held where objection to the making of a draft order embodying a scheme under Part IV of the Act is made and not withdrawn (see Sched. VIII, paragraph 3 (2), *post*).

*Ministry of Transport Act, 1919, s. 20.*—3 Halsbury's Statutes 436. Sub-s. (1) of that section provides that the Minister of Transport may hold such inquiries as he considers necessary or desirable for the purposes of that Act, and that the Minister, and, if authorised by the Minister, the person appointed to hold any such inquiry, may by order require any person, subject to the payment or tender of the reasonable expenses of his attendance, to attend as a witness and give evidence or to produce any documents in his possession or power which relate to any matter in question at the inquiry, and are such as would be subject to production in a court of law; and, if any person fails without reasonable excuse to comply with any of the provisions of any such order, he shall be liable, on summary conviction, to a fine not exceeding five pounds, and the person holding the inquiry shall have power to take evidence on oath and for that purpose to administer oaths.

Sub-s. (2) of the said s. 20 provides that notices of inquiries may be given and published in accordance with such general or special directions as the Minister may give.

**123. Administrative expenses and receipts by Government departments.**—(1) Any administrative expenses incurred in the execution of this Act by the Minister or by any other Minister of the Crown or Government department shall be paid out of moneys provided by Parliament. [1861]

(2) Any sums received by the Minister or by any other Minister of the Crown or Government department under or by virtue of this Act, other than any sum received by the Minister under section two of the Railway Freight Rebates Act, 1943, as amended by the provisions of Part V of this Act, shall be paid into the Exchequer. [1862]

*Railway Freight Rebates Act, 1943, s. 2.*—36 Halsbury's Statutes 262.

**124. Board of Trade documents.**—All documents purporting to be made or issued by the Board of Trade for any of the purposes of this Act and to be sealed with the seal of the Board, or to be signed by a secretary, under secretary or assistant secretary of the Board, or any person authorised in that behalf by the President of the Board, shall be received in evidence and deemed to be a document so made or issued without further proof, unless the contrary is shown. [1863]

**125. Interpretation.**—(1) In this Act, except so far as the contrary is expressly provided or the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say,—

“ abnormal indivisible load ” means a load which—

(i) cannot without undue expense or undue risk of damage be divided into two or more loads for conveyance on a road ; and

(ii) owing to its dimensions or weight can only be carried by motor vehicles or trailers the use of which on roads is lawful only by reason of an order of the Minister made under proviso (b) to subsection (1) of section three of the Road Traffic Act, 1930 ;

“ alteration ”, in relation to a charges scheme under Part V of this Act, includes an addition, and “ alter ” shall be construed accordingly ;

“ amalgamated company ” has the same meaning as in the Railways Act, 1921 ;

“ borrow ”, in relation to the Commission or any other body, does not include—

(a) the receipt of money by the Commission or that body in the course of the carrying on of a savings bank operated for the benefit of the employees of the Commission or that body, or the use by the Commission or that body of money so received ; or

(b) the receipt or use by the Commission or that body of moneys received by trustees carrying on such a savings bank as aforesaid ; or

(c) the receipt or use by the Commission or that body of moneys of a pension fund established for the purposes of a pension scheme in which employees of the Commission or that body are participants.

“ canal carrier undertaking ” means an undertaking consisting wholly or partly of the carriage of goods by canal or inland navigation ;

“ charges ” includes fares, rates, tolls and due of every description ;

“ coastal shipping ” means the carrying of goods or passengers in ships by sea to or from any point in Great Britain from or to any point in the United Kingdom, the Isle of Man, the Channel Islands or Eire, but does not include the carrying of goods or passengers in the exercise of a right of ferry legally established whether by Act of Parliament or otherwise ;

“ contravention ”, in relation to any provision of this Act or of any regulation or order made thereunder, includes a failure to comply with the requirements of that provision, and “ contravene ” shall be construed accordingly.

“ director ”, in relation to a body the affairs whereof are managed by the members thereof without any board of directors or similar body, means a member of the body ;

“ dividend ” includes any distribution of profits by way of bonus or otherwise ;

“ dock ” includes any pier, jetty or other place at which ships can ship or unship goods or passengers ;

“ emoluments ” includes any allowances, privileges or benefits, whether obtaining legally or by customary practice ;

“ harbour ” means any harbour, whether natural or artificial, and any port, haven, estuary, tidal or other river or inland waterway navigated by sea-going ships, and any dock ;

“ hire purchase agreement ” and, in relation to a hire purchase agreement, “ hirer ” have the same meanings as in the Hire Purchase Act, 1938 ;

“ inland waterway ” includes every such waterway whether natural or artificial ;

- "liability" includes an obligation ;
- "local authority" means the council of a county, the Common Council of the City of London, or the council of a county borough ;
- "meat" means carcases of animals, parts of carcases of animals, or offals of animals, being carcases, part of carcases or offals suitable for human consumption, whether fresh, chilled or frozen, but not being carcases, parts of carcases or offals which have been cooked or subjected to any process other than skinning, trimming or cleaning ;
- "the Minister" means the Minister of Transport or the Minister of War Transport ;
- "mortgage or other like incumbrance" means a mortgage, a pledge or a charge or lien for securing money or money's worth, and in relation to a mortgage or other like incumbrance "the incumbrancer" means the mortgagee, pledgee or person entitled to the benefit of the charge or lien, as the case may be ;
- "officer" includes a managing director and a director whose functions are substantially those of an employee but does not include any other director, and "employment" and "employed" shall be construed accordingly ;
- "operating centre" has the meaning assigned to it by sections fifty-eight and sixty-two of this Act ;
- "ordinary furniture removal" means the removal of furniture or effects, not being part of the stock in trade of the person to whom they belong, from or to premises occupied by that person to or from other premises occupied by him or to or from a store, not being the store of a person from whom he has recently purchased or hired the furniture or effects or to whom he has sold or is about to sell the furniture or effects ;
- "participant" means, in relation to a pension scheme, a person who (whether he is referred to in the scheme as a member, as a contributor or otherwise howsoever) contributes or has contributed under the scheme and has pension rights thereunder ;
- "passenger road transport service" means a service of express carriages, stage carriages, tramcars or trolley vehicles carrying passengers ;
- "passenger transport service" means a passenger road transport service or a service carrying passengers by rail ;
- "pension", in relation to a person, means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of him, and includes a gratuity so payable and a return of contributions to a pension fund, with or without interest thereon or any other addition thereto and any sums payable on or in respect of the death of that person ;
- "pension fund" means a fund established for the purposes of paying pensions ;
- "pension rights" includes, in relation to any person, all forms of right to or eligibility for the present or future payment of a pension, and any expectation of the accruer of a pension under any customary practice, and includes a right of allocation in respect of the present or future payment of a pension ;
- "pension scheme" includes any form of arrangements for the payment of pensions, whether subsisting by virtue of Act of Parliament, trust, contract or otherwise ;
- "port facilities" means the constructing, improving, maintaining, regulating, managing, marking or lighting of a harbour or any part thereof, the berthing, towing, moving or dry-docking of a ship which is in, or is about to enter, or has recently left a harbour, the loading or unloading of goods, or embarking or disembarking of passengers

- in or from any such ship, the lighterage or the sorting, weighing, warehousing or handling of goods in a harbour ;
- “ privately owned ”, in relation to a railway wagon, means owned by any person other than the Commission, a railway company or a light railway company ;
- “ property ” does not include a mere contractual right ;
- “ railway wagon ” does not include any wagon constructed for use otherwise than on standard gauge railways ;
- “ repayment or distribution of capital ” includes any distribution by way of bonus or otherwise not made wholly out of profits and also includes any distribution of assets made otherwise than in cash ;
- “ securities ”, in relation to a body corporate, means any shares, stock, debentures, debenture stock, any perpetual annuities, and any other security of a like nature of the body corporate and, in the case of a local authority, includes a mortgage created under Part IX of the Local Government Act, 1933, or any similar enactment and a mortgage given to the Public Works Loan Commissioners ;
- “ ship ” includes every description of vessel used in navigation ;
- “ statutory provision ” means a provision whether of a general or a special nature contained in, or in any document made or issued under, any Act, whether of a general or a special nature ;
- “ superimposed trailer ” means a trailer which is normally attached to the vehicle that draws it in such a manner that part of the trailer is superimposed upon that vehicle and that not less than twenty per cent. of any load evenly distributed upon the trailer is borne by that vehicle ;
- “ Transport Tribunal ” means the tribunal heretofore known as the Railway Rates Tribunal. [1864]

(2) Except in so far as the context otherwise requires, expressions used in Part III of this Act have the same meanings as in the Road and Rail Traffic Act, 1933, and expressions used in any provision of this Act in relation to the carriage of passengers by road have the same meanings as in the Road Traffic Act, 1930. [1865]

(3) In this Act, except in so far as the context otherwise requires, the expression “ the appointed day ” means such day as the Minister may by order appoint, and different days may be appointed for different purposes and different provisions of this Act. [1866]

(4) The provisions of the Thirteenth Schedule to this Act shall have effect for the purpose of determining whether or not any body corporate directly or indirectly controls any other body corporate. [1867]

(5) Any reference in this Act to the transfer of the whole or any part of any undertaking includes a reference to any such transfer as is effected in consequence of the giving in relation to that undertaking of a notice of acquisition under Part III of this Act. [1868]

(6) Except in so far as the context otherwise requires, any reference in this Act to any other enactment shall be construed as a reference to that enactment as amended, extended or applied by or under any other enactment, including this Act. [1869]

*Road Traffic Act, 1930, s. 3 (1) (b).*—23 Halsbury's Statutes 610.

*Railways Act, 1921.*—14 Halsbury's Statutes 316.

*Hire Purchase Act, 1938.*—31 Halsbury's Statutes 660. S. 21 of that Act contains the following definitions :

“ Hire-purchase agreement ” means an agreement for the bailment of goods under which the bailee may buy the goods or under which the property in the goods will or may pass to the bailee, and where by virtue of two or more agreements, none of which by itself constitutes a hire-purchase agreement, there is a bailment of goods and either the bailee may buy the goods, or the property therein will or may pass to the bailee, the agreements shall be treated for the purposes of this Act as a single agreement made at the time when the last of the agreements was made.

"Hirer" means the person who takes or has taken goods from an owner under a hire-purchase agreement and includes a person to whom the hirer's rights or liabilities under the agreement have passed by assignment or by operation of law.

*Local authority.*—In the original Bill the term "local authority" was defined to include, in addition to the above-mentioned authorities, non-county borough councils and metropolitan borough councils. These authorities were excluded from the definition by an Amendment moved by the Government on the Report Stage of the Bill. The reason for this was subsequently explained by the Government spokesman during the Committee Stage in the House of Lords as follows:—

"The reason why the Government decided to amend the definition was because the urban districts then asked, owing to the inclusion of non-county boroughs, that urban districts should be included, and it came to the knowledge of the Government that the rural districts were preparing to make a similar request. The effect of that would have been to extend the field of consultation [consultation between the British Transport Commission and local authorities is obligatory before the submission of an area road transport scheme to the Minister; see s. 63 (2), *ante*] over an unreasonably wide area, and accordingly the Government reached the conclusion that the definition should be amended so as to embrace only county boroughs, county councils and the Common Council of the City of London, leaving the views of inhabitants of non-county boroughs and county districts to be ascertained through the county council, and not both through that channel and also directly. . . .

"The Government have gone a long way, in requiring the Commission to consult with local authorities, to ensure that local wishes and views are fully placed before the Commission, but a point is reached at which excessive consultation can stultify effective action. If the field of consultation is extended beyond the county and county borough limits, it is the Government's view that stultification will begin to arise" (149 H. of L. Official Report 378).

It may be noted that an enlargement of the definition of local authority would, in addition to enlarging the field of consultation, automatically enlarge the number of authorities entitled to make objections and other representations with regard to charges schemes (see ss. 78 (2) (a), 79 (1) (b), 80 (3) (a) and 81, *ante*).

In certain provisions of the Act the term local authority is enlarged to include a county district council (see ss. 114 (5), 115 (5), *ante*, Sched. VIII, paragraph 1 (1), *post*).

*The Minister.*—It is necessary to give this expression the alternative meaning of the Minister of War Transport in order to cover references to that Minister in ss. 42, 51, *ante*. The Ministry of War Transport, which was created by S. R. & O., 1941, No. 654, made under the Ministers of the Crown (Emergency Appointments) Act, 1939 (32 Halsbury's Statutes 1031), was dissolved by S. R. & O., 1946, No. 375, made under the Ministers of the Crown (Transfer of Functions) Act, 1946, s. 1 (2) (39 Halsbury's Statutes 82), the functions of the Minister of War Transport being transferred to the Minister of Transport.

*Express carriages, stage carriages, tramcars, trolley vehicles.*—"Express carriages" are motor vehicles carrying passengers for hire or reward at separate fares (none of which is less than one shilling for a single journey or such greater sum as may be prescribed) and for a journey or journeys from one or more points specified in advance to one or more common destinations so specified, and not stopping to take up or set down passengers other than those paying the appropriate fares for the journey or journeys in question.

"Stage carriages" are motor vehicles carrying passengers for hire or reward at separate fares (all or any of which are less than one shilling for a single journey or such greater sum as may be prescribed), stage by stage, and stopping to pick up or set down passengers along the line of route, and any other motor vehicles carrying passengers for hire or reward at separate fares and not being express carriages as above defined (see sub-s. (2), *ante*, and the Road Traffic Act, 1930, s. 61; 23 Halsbury's Statutes 654).

"Tramcar" includes any carriage used on any road by virtue of an order made under the Light Railways Act, 1896.

"Trolley vehicle" means a mechanically-propelled vehicle adapted for use upon roads without rails and moved by power transmitted thereto from some external source (see sub-s. (2), *ante*, and the Road Traffic Act, 1930, s. 121; 23 Halsbury's Statutes 686).

*Local Government Act, 1933, Part IX.*—26 Halsbury's Statutes 412-424.

*Road and Rail Traffic Act, 1933.*—26 Halsbury's Statutes 370. For the meanings of expressions in that Act which are used in Part III of the present Act, see notes to the relevant sections, *ante*.

*Road Traffic Act, 1930.*—23 Halsbury's Statutes 607. For the meanings of expressions in that Act which are used in relation to the carriage of passengers by road in this Act, see notes to s. 41, *ante*, and note "Express carriages, etc.," *supra*.

## 126. Application to Scotland. [1870]

## 127. Application to Northern Ireland. [1871]

128. Short title, and repeal.—(1) This Act may be cited as the Transport Act, 1947. [1872]

(2) The enactments specified in the Fifteenth Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule—

(a) in the case of the enactments specified in Part I of that Schedule, as from the passing of this Act;

(b) in the case of the enactments specified in Part II of that Schedule, as from the first day of January, nineteen hundred and forty-eight;

- (c) in the case of the enactments specified in Part III of that Schedule, as from the appointed day. [1873]

*Passing of this Act.*—August 6, 1947.

*Appointed day.*—No day had been appointed up to the time of going to press.

## SCHEDULES

### Section 1

#### FIRST SCHEDULE

##### PROVISIONS AS TO BRITISH TRANSPORT COMMISSION

1. The Commission shall be a body corporate with perpetual succession and a common seal and power to hold land without licence in mortmain.
2. The Commission may act notwithstanding a vacancy among the members thereof.
3. The quorum of the Commission shall be three, and, subject as aforesaid, the Commission may regulate their own procedure.
4. The application of the seal of the Commission shall be authenticated by the signatures of the chairman of the Commission or some other member of the Commission authorised by the Commission to authenticate the application of the seal thereof, and of the secretary of the Commission or some person authorised by the Commission to act in his stead in that behalf.
5. Every document purporting to be an instrument issued by the Commission and to be sealed as aforesaid or to be signed on behalf of the Commission shall be received in evidence and be deemed to be such an instrument without further proof unless the contrary is shown. [1874]

*General note.*—This Schedule sets out the provisions having effect with respect to the Commission by virtue of s. 1 (9), *ante*.

For the names of the first members of the Commission, see note to s. 1, *ante*.

### Section 5

#### SECOND SCHEDULE

##### PROVISIONS AS TO EXECUTIVES

1. Each Executive shall consist of a chairman and not less than four nor more than eight other members appointed by the Minister after consultation with the Commission from among persons who appear to the Minister to have had wide experience and shown capacity in transport, industrial, commercial or financial matters, in administration or in the organisation of workers.
- 2.—(1) Every member of an Executive shall hold and vacate office in accordance with the terms of his appointment, and shall hold office on such terms and conditions (including terms and conditions relating to remuneration and pensions) as may be determined from time to time by the Commission with the approval of the Minister and the Treasury ;  
Provided that any member may at any time by notice in writing to the Commission resign his office.  
(2) A member of an Executive shall, on ceasing to be a member, be eligible for re-appointment.  
(3) A person shall be disqualified for being appointed or being a member of an Executive so long as he is a member of the Commons House of Parliament.  
(4) Before appointing a person to be a member of an Executive, the Minister shall satisfy himself that the person will have no such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member of the Executive and the Minister shall also satisfy himself from time to time with respect to every member of an Executive that he has no such interest ; and any person who is, or whom the Minister proposes to appoint to be, a member of an Executive shall, whenever requested by the Minister so to do, furnish to him such information as the Minister considers necessary for the performance by the Minister of his duties under this sub-paragraph.  
(5) Any remuneration or pension payable under this paragraph shall be paid by the Commission.
3. Every Executive shall be a body corporate with perpetual succession and a common seal.

4. Every Executive may act notwithstanding any vacancy among the members thereof, and the quorum and procedure of every Executive shall be such as the Executive may from time to time determine.

5. The application of the seal of an Executive shall be authenticated by the signature of the chairman of the Executive or some other member of the Executive authorised by the Executive to authenticate the application of the seal thereof and of an additional person authorised by the Executive to authenticate the application of the seal thereof.

6. Every document purporting to be an instrument issued by an Executive and to be sealed as aforesaid or to be signed on behalf of the Executive shall be received in evidence and be deemed to be such an instrument without further proof unless the contrary is shown. [1875]

*General note.*—This Schedule contains provisions which are, in accordance with s. 5 (2), *ante*, to have effect with respect to the membership of the Executives constituted under that section and otherwise in relation to them.

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Definitions.*—For definitions of “the Minister” and “pension,” see s. 125 (1), *ante*.

Sections 12, 16, 21, 22, 23,      **THIRD SCHEDULE**  
25, 26, 27, 38, 82, 84, 89,  
99, 100, 101, 127 and Sch. 5

**BODIES WHOSE UNDERTAKINGS ARE TRANSFERRED TO COMMISSION [1876]**

\* \* \* \* \*

Sections 16, 17, 89      **FOURTH SCHEDULE**  
and Sch. 5

**SECURITIES TO BE REPLACED BY BRITISH TRANSPORT STOCK [1877]**

\* \* \* \* \*

Sections 16, 18, 25      **FIFTH SCHEDULE**  
and 89

**ISSUE OF BRITISH TRANSPORT STOCK IN SATISFACTION OF RAILWAY OR CANAL  
COMPENSATION [1878]**

\* \* \* \* \*

Section 30      **SIXTH SCHEDULE**

**COMPENSATION FOR ACQUISITION OF PRIVATELY-OWNED WAGONS [1879]**

\* \* \* \* \*

Section 33      **SEVENTH SCHEDULE**

**WAGONS EXEMPTED FROM CERTAIN RESTRICTIONS UNDER PART II [1880]**

\* \* \* \* \*

Sections 38, 63, 64, 66,      **EIGHTH SCHEDULE**  
102 and 126

**ORDERS GIVING EFFECT TO SCHEMES**

**PART I**

1.—(1) Where it appears to the Minister that the scheme submitted to him makes satisfactory provision with respect to the matters dealt with in the scheme, he shall prepare the draft of an order embodying the scheme and give notice of the preparation of the draft and that he proposes to proceed with the making of the order:

Provided that, in the case of a scheme under Part IV of this Act which provides for the transfer of the whole or any part of any undertaking, the Minister shall not regard the scheme as making satisfactory provision unless—



- (a) where the person theretofore carrying on the undertaking is a local authority or is a joint committee, joint board, joint authority or other combined body, being a committee, board, authority or body all the members of which are, or are representatives of, local authorities, it makes provision for compensation to that local authority, joint committee, joint board, joint authority or combined body, which is, in the opinion of the Minister, identical, as near as may be, with the provision made in the case of transfers under Part II of this Act from local authorities ;
- (b) in the case of an undertaking or part of an undertaking (not being an undertaking theretofore carried on by such a person as is referred to in subhead (a) of this proviso), the activities of which before the transfer by or under the scheme consist wholly or partly of operating passenger road transport services, and the activities, if any, of which after that transfer will not include the operation of such services, it complies with the provisions of Part II of this Schedule ;
- (c) in any other case, being a case in which the transfer is, in the opinion of the Minister, comparable in the material respects to any form of transfer of the whole or part of an undertaking effected under Part II or Part III of this Act, it provides compensation on a basis reasonably comparable in his opinion to that of the compensation provided under this Act in the case of that form of transfer ; and
- (d) in any other case, it provides, in the opinion of the Minister, proper compensation in respect of the transfer.

References in this sub-paragraph to local authorities (other than the last reference in sub-head (a) of the proviso thereto) include references to councils of county districts.

(2) Where it appears to the Minister in the case of any scheme submitted to him that it would not be expedient to give effect to the scheme in the form in which it was submitted to him, he may refer the scheme with his observations thereon to the Commission for their further consideration and thereupon they shall re-consider the scheme in the light of the Minister's observations and may again submit the scheme to the Minister with such amendments as they think fit

2.—(1) A notice under paragraph 1 of this Schedule shall be published—

- (a) in the London Gazette, the Edinburgh Gazette, or both, according as the scheme affects England, Scotland, or both ; and
- (b) in such local newspapers, and in such other ways, if any, as appear to the Minister best suited for bringing the notice to the attention of persons concerned,

and shall specify a place where the draft of the order may be inspected, and copies thereof obtained at all reasonable hours, and the time (not being less than forty days from the publication of the notice) within which, and the manner in which, any objections to the draft may be made to the Minister, and the Minister shall consider any objections made within the time and in the manner specified in the notice :

Provided that the Minister shall not be required to consider any objection unless it comprises or there is submitted therewith a statement in writing setting out the specific grounds for any amendments, additions or modifications asked for, or any objection which in his opinion is frivolous.

(2) Any such objection as aforesaid may ask for amendments, additions or modifications to or of the order which amount to amendments, additions or modifications to or of the scheme.

3.—(1) If there are no objections which the Minister is required to consider, or if all such objections are withdrawn, the Minister may make the order either in the terms of the draft or subject to such amendments, additions or modifications, if any, as he thinks fit, being amendments, additions or modifications which in his opinion do not effect important alterations in the draft as published.

(2) Where any such objection is made and is not withdrawn, the Minister shall cause in the case of a scheme under Part IV of this Act, a public local inquiry, or, in any other case, an inquiry, to be held with respect thereto, and the Minister may, after considering the report of the person by whom the inquiry was held make the order either in the terms of the draft or subject to such amendments, additions or modifications as the Minister thinks fit.

(3) The amendments, additions or modifications referred to in this paragraph may amount to amendments, additions or modifications to or of the scheme.

4. The Minister may, with the consent of the Treasury, pay out of moneys provided by Parliament to any person appointed to hold an inquiry for the purposes of this Schedule such fees and allowances, and to persons giving evidence such allowances, as he may with the consent of the Treasury determine. [1881]

## PART II

5. Where, by or under a scheme made under Part IV of this Act, such an undertaking or part of an undertaking as is specified in subhead (b) of paragraph 1 of this Schedule is transferred to a body constituted or specified by or under that scheme, the scheme shall incorporate in relation to that undertaking the provisions of section forty-seven of this Act and of the Ninth Schedule to this Act subject to the adaptations and modifications set out in the subsequent provisions of this Part of this Schedule.

6. The following references shall throughout the said section forty-seven and the said Ninth Schedule be construed as follows—

- (a) references to a goods vehicle shall be construed as including references to any vehicle registered under the Roads Act, 1920 ;
- (b) references to the Commission shall be construed as references to the said body ;
- (c) references to a notice of acquisition, and to the giving of such a notice, and to the transfer resulting from or effected by such a notice shall be construed as references to a transfer by or under a scheme.

7. At the end of subsection (1) of the said section forty-seven there shall be inserted the following proviso—

“ Provided that, where the vehicle is a trolley vehicle or a tramcar, paragraph (a) of this subsection shall have effect as if, in the case of a trolley vehicle, the words ‘ one-seventh ’ or, in the case of a tramcar, the words ‘ one-fourteenth ’ were substituted for the words ‘ one-fifth ’, wherever those words occur.”

8. In subsection (3) of the said section forty-seven for the word “ five ” there shall be substituted the word “ seven ”.

9. In paragraph (a) of subsection (4) of the said section forty-seven for the words “ vehicles authorised to be used under A licences or B licences ” there shall be substituted the words “ public service vehicles, trolley vehicles or tramcars ”.

10. The provisions of subsection (5) of the said section forty-seven shall apply where the rights of the hirer under a hire purchase agreement vest in the said body by reason of a transfer by or under the scheme.

11. The reference in subsection (8) of the said section forty-seven to any other express provision contained in this Act shall be construed as a reference to any other express provision for the payment of additional compensation contained in the scheme.

12. The said Ninth Schedule shall have effect as if—

- (a) for sub-paragraph (2) of paragraph 2 of that Schedule there were substituted the following sub-paragraph :—

“ (2) In this Schedule, the expression ‘ the last three financial years ’ means, in relation to an undertaking—

- (a) where the undertaking has been carried on for not less than three years ending with the date in the year nineteen hundred and forty-eight to which the accounts of the undertaking for a period of twelve months were made up in the ordinary course, the three years ending with that date ; or
- (b) in any other case, the three years ending with the date in the twelve months immediately preceding the transfer to which the accounts of the undertaking for a period of twelve months were made up in the ordinary course ; ”

(b) paragraph 6 of that Schedule were omitted. [1882]

*General effect of Schedule.*—This Schedule sets out the provisions in accordance with which the Minister is to make an order giving effect to an area road transport scheme (see s. 63 (3), *ante*) or a harbour scheme (s. 66 (8); see title HARBOURS, DOCKS AND WHARVES, *ante*).

*Preparation and making of area road transport schemes.*—Apart from Railway Clearing House schemes made under Part II of the Act, which are outside the scope of this Volume, the Act provides for the making of two sorts of schemes, namely, area road transport schemes and schemes as to harbours. As to harbour schemes, see title HARBOURS, DOCKS AND WHARVES, *ante*.

The provisions of the Act relating to the preparation and making of area road transport schemes may be summarised as follows. The body which is empowered, and where the Minister so directs, required to prepare a scheme, is the Commission, but no scheme will take effect until submitted to the Minister and embodied in an order made by him in accordance with the provisions of the present Schedule (s. 63 (3), *ante*).

It is the duty of the Commission to review as soon as may be the passenger road transport services in Great Britain with a view to determining the areas with respect to which schemes are to be prepared (s. 63 (1), *ante*). Before a scheme is submitted to the Minister certain specified bodies and persons likely to be affected are to be consulted. These bodies include every local authority within or partly within the area (which by s. 125, *ante*, means a county council, county borough council or the Common Council of the City of London) and every joint committee or other combined body all the members of which are, or are representative of, local authorities and which is providing road passenger transport services in the area.

The provisions of the Act relating to the contents of schemes are drawn in wide and, for the most part, permissive terms in order that there may be flexibility to make different schemes to meet the local requirements of different areas. In five cases, however, the Act lays down rules as to the contents of schemes.

First, a scheme may not provide for the compulsory acquisition of part only of an undertaking unless that part includes the whole of the passenger road transport side of the undertaking (s. 64 (1), proviso). Secondly, where a scheme is to be administered by some body or bodies other than the British Transport Commission, the scheme must provide that at least one member of any such body shall be a person with a minimum of six years' experience in local government in the area (s. 64 (3), *ante*).

Next, where a scheme prohibits or restricts the provision of services within the area otherwise than under the scheme, the scheme must provide compensation for any person who was operating a road passenger transport undertaking on August 6, 1947, which is not transferred under the scheme, where that person will suffer substantial interference with some transport activity carried on by him before and since that date as a result of such prohibition or restriction, the amount of such compensation to be determinable in case of dispute by the Transport Arbitration Tribunal (s. 64 (4), *ante*). Fourthly, a scheme which provides for the transfer of an undertaking must make appropriate provision for compensating officers and servants in accordance with s. 102 (1), *ante*. Fifthly, a scheme which provides for the transfer of an undertaking must provide for compensating the transferor in accordance with the proviso to paragraph 1 (1), *ante*.

In the case of a local authority (as above defined) a county district council or any other of the bodies above-mentioned who are to be consulted before the submission of a scheme, such compensation is to be identical as near as may be with the compensation provided by s. 25, *ante*, in the case of transfers under Part II of the Act (paragraph 1 (1), proviso (a), *ante*).

The Minister is to embody in draft orders schemes which appear to him satisfactory, and provision is made for the publication of notices of the making of a draft order and for the making of objections thereto (paragraphs 1 (1), 2, *ante*).

Where objection is duly made and not withdrawn, the Minister is to hold a public local inquiry and may, after considering the report of the person holding the inquiry, make the order in the terms of the draft with or without amendments (paragraph 3, *ante*).

Where objection having been duly made is not withdrawn before the order is made, the order will be subject to the special parliamentary procedure provided by the Statutory Orders (Special Procedure) Act, 1945 (38 Halsbury's Statutes 439).

*Satisfactory provision.*—As to other cases where the Minister is not to consider that a scheme makes satisfactory provision for the purposes of paragraph 1 (1), *ante*, see ss. 64 (4), 102 (1), *ante*.

*Local authority, joint committee, joint board, etc.*—Before an area road transport scheme is submitted to the Minister the Commission are to consult every local authority within or partly within the area and every joint committee, joint board, etc., which is providing passenger road transport services therein (see s. 63 (2), *ante*).

"Local authority" means the council of a county, the Common Council of the City of London, the council of a county borough or the council of a county district (see s. 125, *ante*, and the last sentence of paragraph 1 (1), *ante*).

*Compensation to local authorities.*—The transfer under a scheme of an undertaking belonging to a local authority, as above defined, automatically attracts the additional compensation provided for local authorities by s. 114, *ante*.

Such a transfer if made to the Commission will also automatically attract the right of pre-emption provided by s. 115, *ante*. It is not necessary for a scheme to make provision in regard to either of these matters.

*Transfers from local authorities under Part II of the Act.*—See s. 25, *ante*.

*Inquiry.*—As to inquiries, see s. 122, *ante*.

*Part II of the Schedule.*—Part II of the Schedule relates to paragraph 1 (1) (b) of Part I. S. 47, *ante*, and Sched. IX, *post*, deal with the amount of compensation payable in respect of road haulage undertakings acquired by the British Transport Commission under Part III of the Act.

Part II of the Schedule modifies and adapts these provisions consequent upon their application to the determination of compensation in respect of passenger road transport undertakings by paragraph 1 (1) (b), *ante*.

## Section 47 and Sch. 8

## NINTH SCHEDULE

MEANING OF "AVERAGE NET ANNUAL PROFIT" IN RELATION TO ROAD  
TRANSPORT UNDERTAKINGS

1. Where a notice of acquisition is given under Part III of this Act with respect to an undertaking, the average net annual profit of the undertaking shall, for the purpose of compensation for cessation of business, be ascertained in accordance with the subsequent provisions of this Schedule.

2.—(1) There shall be ascertained, in relation to each of the last three financial years of the undertaking, what profit or loss was made in the carrying on of the undertaking.

(2) In this Schedule, the expression "the last three financial years" means, in relation to an undertaking,—

(a) where accounts of the undertaking were made up in the ordinary course for a period of twelve months ending with a date within the twelve months immediately preceding the date of transfer, the three years ending with the first mentioned date ;

(b) in any other case the three years ending with such date within the twelve months immediately preceding the date of transfer as may be agreed between the Commission and the transferor, or, in default of agreement, the three years ending immediately before the date of transfer.

3. In ascertaining the said profits or losses, such deductions shall be made in respect of wear and tear and provision for replacement of property held for the purposes of the undertaking as may be just.

4. When the amount of the profit or loss for any of the said three years has been ascertained, such adjustment, if any, of the amount thereof shall be made as may be just, having regard to the extent and nature of the property held in the year for the purposes of the undertaking as compared with the extent and nature of the property which vests in the Commission by virtue of the notice of acquisition, not being property duly disclaimed by the Commission.

5.—(1) The amount of the profits made in the said three years, ascertained and adjusted as aforesaid, shall then be aggregated, and the amount of the losses made in the said three years, ascertained and adjusted as aforesaid, shall also be aggregated.

(2) If there are no profits to be aggregated, or the aggregate of the profits does not exceed the aggregate of the losses, the average net annual profit shall be taken to be nil.

(3) If the aggregate of the profits exceeds the aggregate of the losses—

(a) the excess shall be divided by three ; and

(b) there shall then be ascertained the sum which is equal to one year's interest, at such rate as the Treasury may determine, on the net amount of compensation payable in respect of the property vested in the Commission by virtue of the notice of acquisition ; and

(c) if the amount ascertained under sub-head (b) of this sub-paragraph is equal to or exceeds the amount ascertained under sub-head (a) thereof, the net annual profit of the undertaking shall be taken to be nil ; and

(d) if the amount ascertained under the said sub-head (b) is less than the amount ascertained under the said sub-head (a) the difference shall be taken to be the average net annual profit of the undertaking ;

Provided that where, by the end of the last three financial years, less than three years have elapsed since the undertaking began to be carried on, sub-head (a) of this sub-paragraph shall have effect as if, instead of requiring the excess to be divided by three, it required the sum to be ascertained which bears to the excess the same proportion that one year bears to the period which has elapsed as aforesaid.

6. Where, by the end of the last three financial years, not less than three years have elapsed since the undertaking began to be carried on, and the transferor satisfies the Commission, or, in case of dispute, the arbitration tribunal established under Part VIII of this Act, that in any one of the last three financial years, by reason of the abnormality of the circumstances of that particular year as compared with the circumstances of the other two years, the profit made was to a substantial extent less than, or the loss made showed a substantial fall from, the average profit made in the other two years, then only those other two years shall be taken into

account for the purposes of the last preceding paragraph, and accordingly for the word "three," wherever that word occurs in the last preceding paragraph, except in the proviso thereto, there shall be substituted the word "two."

7.—(1) Where the undertaking was formed wholly or partly by the acquisition or merger of other undertakings—

- (a) the profit or loss made in any of the last three financial years in carrying on each of those other undertakings shall be taken into account as if it were a profit or loss made in carrying on the undertaking itself; and
- (b) where any of those other undertakings began to be carried on before the undertaking itself, the earliest date on which any of those undertakings began to be carried on shall be taken, for the purposes of this Schedule, to be the date when the undertaking itself began to be carried on.

(2) Where any such other undertaking as is mentioned in sub-paragraph (1) of this paragraph was itself formed wholly or partly by the acquisition or merger of other undertakings, the reference in the said sub-paragraph to the first mentioned other undertaking shall be taken to include references to the last mentioned other undertakings, and so on in the case of a series of acquisitions or mergers.

8. For the purposes of this Schedule, any rights under a hire purchase agreement which vest in the Commission shall be treated as if they were property vested in the Commission, and references in this Schedule to property duly disclaimed by the Commission shall be taken to include references to any rights under any such agreement which is so disclaimed by the Commission. [1883]

*General note.*—This Schedule sets out the provisions in accordance with which the average net annual profit of a road haulage undertaking acquired by the British Transport Commission under Part III of the Act is to be ascertained for the purpose of calculating the compensation to be paid in respect of cessation of business under s. 47 (3), *ante*.

By Sched. VIII, Part II, *ante*, the provisions of s. 47, *ante*, and the present Schedule are modified and applied to the acquisition of a passenger road transport undertaking under an area road transport scheme.

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).

*Property disclaimed.*—As to the power of the Commission to disclaim property, see s. 46, *ante*.

*Arbitration tribunal.*—The Transport Arbitration Tribunal (see s. 105 (1), *ante*).

*Definitions.*—For definitions of "hire purchase agreement" and "property," see s. 125 (1), *ante*.

## Section 72

## TENTH SCHEDULE

### PROVISIONS AS TO THE TRANSPORT TRIBUNAL

1. The Transport Tribunal shall, for the purposes of the exercise of any of their functions under this or any other Act, have full jurisdiction to hear and determine all matters whether of law or of fact, and shall, as respects the attendance and examination of witnesses, the production and inspection of documents, the enforcement of their orders, the entry on and inspection of property and other matters necessary or proper for the due exercise of their said jurisdiction, have in England all such powers, rights and privileges as are vested in the High Court and in Scotland all such powers, rights and privileges as are vested in the Court of Session, and execution may be had in England on any of their orders as if it were an order of the High Court.

2. Where the Transport Tribunal decide that a person is entitled to damages, they may ascertain the amount of the damages either by trial before themselves or by directing inquiry to be taken before one or some of their members or before one of their officers.

3. The Transport Tribunal shall annually make a report to the Minister of all their proceedings, whether under this Act or under any other statutory provision, and the report shall be laid before Parliament, and so much of any enactment as requires an annual report by the Transport Tribunal of any of their proceedings shall cease to have effect.

4. Notwithstanding anything in section twenty-five of the Railways Act, 1921, rules made under section twenty-two of that Act may provide for the review by the Transport Tribunal of decisions previously given by them, and this paragraph shall be deemed to have had effect as from the commencement of that Act.

5. Subject to the provisions of this Act, sections twenty-two to twenty-six of

the Railways Act, 1921 (which contain provisions with respect to the constitution and procedure of, and appeals from, the Transport Tribunal) shall apply with respect to the jurisdiction conferred on the Transport Tribunal by this Act as they apply with respect to the jurisdiction conferred on them by that Act.

6.—(1) Where any proceedings are pending before the Transport Tribunal by virtue of any jurisdiction conferred on them by this Act, other than jurisdiction which but for the provisions of this Act would have been jurisdiction of the Railway and Canal Commission or of the High Court or the Court of Session, the president of the tribunal may, if he sees fit so to do, select one or more persons from a special panel to be constituted as hereinafter provided, and appoint that person or those persons with or without a permanent member or permanent members of the tribunal to hear and determine those proceedings; and the person or persons so appointed shall, for the purposes of the proceedings in respect of which they are so appointed, constitute the tribunal, and subsection (4) of section twenty-four of the Railways Act, 1921, shall not apply in relation to those proceedings. Where proceedings are to be heard and determined by a person or persons selected as aforesaid with a permanent member or permanent members of the tribunal, the president of the tribunal may, if he thinks fit, appoint himself as the said permanent member or one of the said permanent members.

(2) The said panel shall consist of such number of persons nominated by the Lord Chancellor, such number of persons nominated by the Board of Trade, such number of persons nominated by the Secretary of State for Scotland, and such number of persons nominated by the Minister, as the Minister may direct.

(3) Where two or more persons are appointed under this paragraph to hear and determine any proceedings, the president of the Transport Tribunal shall determine which of those persons is to act as president as respects the hearing and determination of the proceedings.

(4) Subsections (2) and (5) of section twenty-four of the said Act shall apply in relation to a member of the special panel as they apply in relation to a member of the general panel.

(5) The President of the Transport Tribunal may, if he thinks fit so to do in relation to any class of proceedings, select one or more persons from the said special panel and appoint them with or without a permanent member or permanent members of the tribunal to hear and determine all proceedings of that class, not being proceedings in relation to which other provisions may have been or may thereafter be made under sub-paragraph (1) of this paragraph; and where such an appointment is made, then, until it is revoked by the President of the tribunal, the preceding provisions of this paragraph shall have effect in relation to any proceedings of that class, not being such proceedings as aforesaid, as if the said person or persons had been selected and appointed under the said sub-paragraph (1) to hear and determine those proceedings.

7.—(1) A person appointed from the special panel or from any other panel of the tribunal constituted under any Act other than this Act, and any additional member of the tribunal appointed under the Ninth Schedule to the London Passenger Transport Act, 1933, shall be paid such remuneration and expenses as the Minister may with the approval of the Treasury determine.

(2) Any such remuneration or expenses shall be defrayed by the Minister out of moneys provided by Parliament, but, so far as not met out of the amount recovered by way of fees, they shall, on demand, be paid to the Minister by the Commission as part of their working expenses. [1884]

*General note.*—This Schedule sets out the provisions having effect with respect to the powers and procedure of the Transport Tribunal by virtue of s. 72 (3), *ante*. The Transport Tribunal is the tribunal formerly known as the Railway Rates Tribunal (see ss. 72 (1), 125 (1), *ante*).

*Railways Act, 1921, ss. 22, 24, 25.*—14 Halsbury's Statutes 333-335.

*London Passenger Transport Act, 1933, Sched. IX.*—26 Halsbury's Statutes 861.

*The Commission.*—The British Transport Commission (see s. 1 (1), *ante*).



## Section 118

## TWELFTH SCHEDULE

## CONSTITUTION OF LEE CONSERVANCY CATCHMENT BOARD [1886]

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## Section 125

## THIRTEENTH SCHEDULE

## MEANING OF "CONTROL"

1. Subject to the provisions of this Schedule, a body corporate shall be deemed for the purposes of this Act to be directly or indirectly controlled by another body corporate if, but only if—

(a) that other either—

(i) is a member of it and controls the composition of its board of directors; or

(ii) holds more than half in nominal value of its equity share capital; or

(b) the first mentioned body corporate is directly or indirectly controlled (whether by virtue of this paragraph or not) by a third body corporate which is directly or indirectly controlled by that other.

2. For the purposes of the preceding paragraph, the composition of a body corporate's board of directors shall be deemed to be controlled by another if, but only if, in relation to all or a majority of the directors one or other of the following conditions is satisfied, that is to say—

(a) that a person's appointment as director, or continuance in office as director, depends on that other exercising in his favour or not exercising against him some power exercisable by that other without the consent of or concurrence of any other person, or can be made so to depend upon the exercise of any power or powers so exercisable; or

(b) that the appointment of a person as director follows necessarily from his appointment as director of that other, and the persons whose appointment follows as aforesaid are all or a majority of the directors of that other.

3. In determining whether one body corporate is or is not directly or indirectly controlled by another body corporate—

(a) any share held or power exercisable by that other in a fiduciary capacity shall be treated as not held or exercisable by it;

(b) subject to the following sub-paragraph, any shares held or powers exercisable—

(i) by any person as a nominee for that other (except where that other is concerned only in a fiduciary capacity); or

(ii) by, or by a nominee for, a body corporate directly or indirectly controlled by that other, not being a body corporate which is concerned only in a fiduciary capacity;

shall be treated as held or exercisable by that other;

(c) any shares held or powers exercisable by any person by virtue of the provisions of any debentures of the first mentioned body corporate or of a trust deed securing any issue of such debentures shall be disregarded.

4. In this Schedule, the expression "equity share capital" means, in relation to a body corporate, its issued share capital excluding any part thereof which, as respects both dividends and capital, carries no right to participate beyond a specified amount in a distribution.

In this paragraph references to share capital include references to capital in the form of stock. [1887]

*General note.*—This Schedule sets out the provisions having effect by virtue of s. 125 (3), *ante*, for the purpose of determining whether or not any body corporate directly or indirectly controls any other body corporate.

*Director.*—For definition of this term, see s. 125 (1), *ante*.

## Section 127

## FOURTEENTH SCHEDULE

## APPLICATION TO NORTHERN IRELAND [1888]

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## Section 128

## FIFTEENTH SCHEDULE

## PART I

*Enactments repealed as from the passing of this Act*

Session and Chapter	Short Title	Extent of Repeal
52 & 53 Vict. c. 57.	Regulation of Railways Act, 1889.	In section two, the words from "and thereupon" to the end of the section.
56 & 57 Vict. c. 29.	Railway Regulation Act, 1893.	Subsection (5) of section one.
56 & 57 Vict. c. 38.	Conveyance of Mails Act, 1893.	Section four.
63 & 64 Vict. c. 27.	Railway Employment (Prevention of Accidents) Act, 1900.	Section twelve.
4 Edw. 7. c. 19.	Railways (Private Sidings) Act, 1904.	Section three.
9 & 10 Geo. 5. c. 50.	Ministry of Transport Act, 1919.	Sections nineteen and twenty-three.
11 & 12 Geo. 5. c. 55.	Railways Act, 1921.	In subsection (4) of section sixteen, from the words "in any of the ways" to the end of the section; in subsection (1) of section twenty-one the words "and not exceeding ten"; subsection (3) of section twenty-two; in subsection (1) of section twenty-four, the words "upon the railways"; section twenty-seven; in section thirty-five the words from "Provided that" to "under that section"; sections fifty-eight and fifty-nine; subsection (2) of section sixty-one; in subsection (3) of section seventy-seven, from the words "in any of the ways" to the end of the subsection; in section eighty, subsection (2), and in subsection (3) the words "or an inquiry by a committee chosen either wholly or partly from such panel as aforesaid".
19 & 20 Geo. 5. c. 17.	Local Government Act, 1929.	Sub-paragraph (4) of paragraph 12 of the Eleventh Schedule.
23 & 24 Geo. 5. c. 14.	London Passenger Transport Act, 1933.	Subsection (1) of section thirty-six; paragraph 5 of the Ninth Schedule.
23 & 24 Geo. 5. c. 53.	Road and Rail Traffic Act, 1933.	Subsection (2) of section sixteen; in subsection (1) of section twenty-nine, the words "after consultation with the Transport Advisory Council": section forty-six; and the Second Schedule.
6 & 7 Geo. 6. c. 23.	Railway Freight Rebates Act, 1943.	Subsection (3) of section two. [1889]

*Regulation of Railways Act, 1889, s. 2.*—14 Halsbury's Statutes 247.

*Railway Regulation Act, 1893, s. 1 (5).*—14 Halsbury's Statutes 250.

*Conveyance of Mails Act, 1893, s. 4.*—13 Halsbury's Statutes 38.

*Railway Employment (Prevention of Accidents) Act, 1900, s. 12.*—14 Halsbury's Statutes 268.

*Railways (Private Sidings) Act, 1904, s. 3.*—14 Halsbury's Statutes 273.

*Ministry of Transport Act, 1919, ss. 19, 23.*—3 Halsbury's Statutes 436, 438.

*Railways Act, 1921.*—14 Halsbury's Statutes 316.

*Local Government Act, 1929, Sched. XI, paragraph 12 (4).*—10 Halsbury's Statutes 1005.

*London Passenger Transport Act, 1933, s. 36 (1), Sched. IX, paragraph 5.*—26 Halsbury's Statutes 784, 861.

*Road and Rail Traffic Act, 1933.*—26 Halsbury's Statutes 870.

*Railway Freight Rebates Act, 1943, s. 2 (3).*—36 Halsbury's Statutes 263.

## PART II

*Enactments repealed as from the first day of January, nineteen hundred and forty-eight*

Session and Chapter	Short Title	Extent of Repeal
11 & 12 Geo. 5. c. 55.	Railways Act, 1921.	Section nineteen; in subsection (2) of section twenty-one the words "in such proportions as the rates tribunal may determine"; and section seventy-five.
23 & 24 Geo. 5. c. 14.	London Passenger Transport Act, 1933.	Subsections (1), (2) and (4) of section three; section fifteen; in section twenty-one, from the beginning of the section to the words "Provided that"; in subsection (2) of section twenty-six, the words "and, in the case of public service vehicles operating wholly or in part outside the special area, subject, as respects any part of the service outside that area, to the provisions of section seventy-two of the Road Traffic Act, 1930"; subsection (4) of section twenty-nine, in the proviso to subsection (2) of section thirty, the words "shall have regard to the desirability of the establishment and maintenance by the Board of an adequate reserve fund, and" and the words "which would in their opinion preclude the Board from complying with their obligations under subsection (4) of section three of this Act, or"; section thirty-one; subsection (4) of section thirty-four; in the proviso to subsection (2) of section thirty-five the words "which would be likely to affect prejudicially the financial position of the amalgamated railway companies or any of them or"; sections thirty-seven, forty-two, forty-three, and forty-six to forty-nine; in section eighty-nine, in paragraph (c) of subsection (11), the words from "in the proportions" to the end of the paragraph, and in subsection (17) the words "in the proportions specified in subsection (11) of this section"; in the Ninth Schedule, sub-paragraph (a) of paragraph 4; and the Tenth Schedule.

*Railways Act, 1921.*—14 Halsbury's Statutes 316.

*London Passenger Transport Act, 1933.*—26 Halsbury's Statutes 744.

[1890]

## PART III

*Enactments repealed as from the appointed day*

Session and Chapter	Short Title	Extent of Repeal
11 & 12 Geo. 5. c. 55.	Railways Act, 1921.	Section sixty-seven.
23 & 24 Geo. 5. c. 53.	Road and Rail Traffic Act, 1933.	In section fifteen, subsections (2) to (9), subsection (12), and in subsection (18) from the beginning of the subsection to the word "but"; in section twenty-two, in subsection (1) the words from "including" to the end of the subsection, in subsection (2) the words "the members and deputy members, and the clerk and other officers and servants of the Tribunal", and in subsection (3) the words "the Tribunal"; and subsection (2) of section twenty-three. [1891]

*Railways Act, 1921, s. 67.*—14 Halsbury's Statutes 362.

*Road and Rail Traffic Act, 1933, ss. 15, 22, 23.*—26 Halsbury's Statutes 885, 890, 891.

## ORDERS, CIRCULARS AND MEMORANDA

MOTOR VEHICLES (INTERNATIONAL CIRCULATION)  
(AMENDMENT) REGULATIONS, 1947

*S. R. & O., 1947, No. 61*

*January 6, 1947*

Whereas in exercise of his powers under, inter alia, section 12 of the Roads Act, 1920, the Minister of War Transport made the Motor Vehicles (International Circulation) Regulations, 1941 (hereinafter referred to as "the Principal Regulations");

And whereas it is expedient that the Principal Regulations should be amended in manner hereinafter appearing;

Now, therefore, the Minister of Transport in exercise of the powers aforesaid now vested in him by virtue of the Ministry of War Transport (Dissolution) Order, 1946, and of all other powers enabling him in that behalf hereby makes the following Regulations:—

1. These Regulations may be cited as "The Motor Vehicles (International Circulation) (Amendment) Regulations, 1947" and shall come into force on the thirteenth day of January, 1947. [1892]

2. The Principal Regulations shall have effect as though in paragraph (ii) of Regulation 9 thereof the letters "QB" were inserted immediately after the letters "QA" and the letters "QD, QE" were inserted immediately after the letters "QC". [1893]

3. The Interpretation Act, 1889, shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament. [1894]

### EXPLANATORY NOTE

*(This Note is not part of the Regulations, but is intended to indicate their general purport.)*

*The purpose of these Regulations is to authorise the use of additional index marks for vehicles brought into the United Kingdom by temporary visitors from countries not parties to the International Convention relative to Motor Traffic of 1926, or from countries parties to that Convention if the visitors do not hold valid International Certificates for Motor Vehicles.*

### MOTOR VEHICLES (DRIVING LICENCES) (AMENDMENT) PROVISIONAL REGULATIONS, 1947

*P. R. & O., 1947*

*February 18, 1947*

These Regulations, certified on account of urgency to come into immediate operation, were revoked as from June 2, 1947, by a consolidating Order, the Motor Vehicles (Driving Licences) Regulations, 1947, S. R. & O., 1947, No. 925, *post*, which, however, continued their provisions without amendment. [1895]

### MOTOR VEHICLES (CONSTRUCTION AND USE) REGULATIONS, 1947

*S. R. & O., 1947, No. 670*

*April 12, 1947*

The Minister of Transport in exercise of the powers conferred on him by section 30 of the Road Traffic Act, 1930, hereby makes the following Regulations.

#### PART I

##### *General*

1. These Regulations may be cited as "The Motor Vehicles (Construction and Use) Regulations, 1947", and shall come into force forthwith. [1896]

2. The Regulations specified in the First Schedule to these Regulations are hereby revoked, without prejudice however to the validity of anything done thereunder or to any liability incurred in respect of any act or omission before the date of the coming into operation of these Regulations. [1897]

3.—(1) In these Regulations, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them :—

"Overall length" means the length of a vehicle measured between parallel planes passing through the extreme projecting points of the vehicle exclusive of :—

- (a) any starting handle,
- (b) any hood when down,
- (c) any ladder forming part of a turntable fire-escape fixed to a vehicle,
- (d) any telescopic fog lamp when extended,
- (e) any snow-plough fixed in front of a vehicle, and
- (f) any post office letter box the length of which measured parallel to the longitudinal axis of the vehicle does not exceed 12 inches.

"Overall width" means the width measured between parallel planes passing through the extreme projecting points of the vehicle exclusive of the driving mirror, and of any direction indicator when in operation and of any snow-plough fixed in front of the vehicle and of so much of the distortion of any tyre as is caused by the weight of the vehicle, and in the case of vehicles registered before 2nd January, 1939, of so much of a swivelling window designed to allow the driver to give hand signals as projects when opened not more than 4 inches beyond the side of the vehicle.

"Overhang" means the distance measured horizontally and parallel to the longitudinal axis of the vehicle between two vertical planes at right angles to such axis passing through the two points specified in paragraphs (i) and (ii) of this definition respectively.

(i) The rearmost point of the vehicle exclusive of

- (a) any hood when down,
- (b) any post office letter box, the length of which measured parallel to the longitudinal axis of the vehicle, does not exceed 12 inches,
- (c) any ladder forming part of a turntable fire escape fixed to a vehicle, and
- (d) any luggage carrier fitted to a motor car constructed solely for the carriage of passengers and their effects and adapted to carry not more than seven passengers exclusive of the driver.

- (ii) (a) in the case of a motor vehicle having only two axles, one of which is not a steering axle, through the centre point of that axle, and
- (b) in the case of a motor vehicle having only three axles where the front axle is the only steering axle, through a point 4 inches in rear of the centre of a straight line joining the centre points to the rear and middle axles, and
- (c) in any other case through a point situated on the longitudinal axis of the vehicle and such that a line drawn from it at right angles to that axis will pass through the centre of the minimum turning circle of the vehicle.

"Safety glass" means glass so constructed or treated that if fractured it does not fly into fragments capable of causing severe cuts.

"Locomotive" means a heavy locomotive or a light locomotive.

"Land locomotive" means a locomotive designed and used primarily for work on the land in connection with agriculture, forestry, land levelling, dredging and similar operations, which is driven on a road only when proceeding to and from the site of such work and which when so driven hauls nothing other than land implements.

"Land tractor" means a motor tractor designed and used primarily for work on the land in connection with agriculture, grass cutting, forestry, land levelling, dredging and similar operations, which is driven on a road only when proceeding to and from the site of such work and which when so driven hauls nothing other than land implements or agricultural trailers.

"Land implement" means any implement or machinery used with a land locomotive or a land tractor in connection with agriculture, grass cutting, forestry, land levelling, dredging or similar operations and includes a living van and any trailer which for the time being carries only the necessary gear or equipment of the land locomotive or land tractor which draws it.

"Agricultural trailer" means a trailer the property of a person

engaged in agriculture which is used on a road only for the conveyance of agricultural produce or of articles required for the purposes of agriculture.

"Articulated vehicle" means a heavy motor car or a motor car with a trailer so attached to the drawing vehicle that part of the trailer is superimposed upon the drawing vehicle, and when the trailer is uniformly loaded not less than 20 per cent. of the weight of its load is borne by the drawing vehicle.

"Indivisible load" means a load which cannot without undue expense or risk of damage be divided into two or more loads for the purpose of conveyance on a road.

"Wheel" in the case of a motor vehicle or trailer means a wheel, the tyre of which when the vehicle is in motion on a road is in contact with the ground.

"Wheeled" in relation to a vehicle means that the whole weight of the vehicle is transmitted to the road surface by means of wheels.

"Track laying" in relation to a vehicle means that the vehicle is so designed and constructed that the weight thereof is transmitted to the road surface either by means of continuous tracks or by a combination of wheels and continuous tracks in such circumstances that the weight transmitted to the road surface by the tracks is not less than half the weight of the vehicle.

"Registered" means registered for the first time under the Roads Act, 1920.

"Pneumatic tyre" means a tyre which complies in all respects with the following requirements:—

- (i) it shall be provided with a continuous closed chamber containing air at a pressure substantially exceeding atmospheric pressure when the tyre is in the condition in which it is normally used, but is not subjected to any load;
- (ii) it shall be capable of being inflated and deflated without removal from the wheel or vehicle;
- (iii) it shall be such, that when it is deflated and is subjected to a normal load, the sides of the tyre collapse.

"Gas" means any fuel that is wholly gaseous at 60° Fahrenheit under a pressure of 30 inches of mercury.

"Gas equipment" means a container or containers for holding, or plant and materials for producing, gas.

"Gas trailer" means a trailer used solely for the carriage of gas equipment for the purpose of the propulsion of the drawing vehicle.

(2) Except where otherwise provided in these Regulations a tyre shall not be deemed to be of soft or elastic material unless the said material is either:—

- (i) continuous round the circumference of the wheel, or
- (ii) fitted in sections so that so far as reasonably practicable no space is left between the ends thereof,

and is of such thickness and design as to minimise, so far as reasonably possible, vibration when the vehicle is in motion, and so constructed as to be free from any defect which might in any way cause damage to the surface of a road.

(3) For the purpose of these Regulations a brake drum shall be deemed to form part of the wheel and not of the braking system.

(4) For the purpose of these Regulations any two wheels of a motor vehicle or trailer shall be regarded as one wheel if the distance between the centres of the areas of contact between such wheels and the road surface is less than 18 inches. [1898]

4.—(1) Every motor cycle and invalid carriage shall be so constructed that it is a wheeled vehicle.

(2) Save as aforesaid every motor vehicle and trailer shall be so constructed that it is either a wheeled vehicle or a track laying vehicle. [1899]

5.—(1) Except where the context otherwise requires these Regulations shall apply to wheeled vehicles only.

(2) Regulations 7, 8, 15, 18, 25, 26 and 31 of these Regulations shall not apply to road rollers.

(3) Regulations 6 to 8, 10 to 13, 15, 16, 19 to 57, 59 and 70 of these Regulations shall not apply to vehicles proceeding to a port for export.

(4) Regulations 7, 8, 12, 15, 26, 31, 35, 39, 40, 48, 51, 52, 54 to 58, 61 to 66 and 87 of these Regulations shall only apply to motor vehicles and trailers used upon highways.

(5) Every motor vehicle registered before the expiration of one year from the making of any Regulation hereof by which the requirements as regards the construction or weight of any class or description of vehicles are varied shall be exempt from the requirements of that Regulation for a period of 5 years from the making thereof, provided that it complies with the requirements of the Regulations to which it would have been subject immediately prior to the making of that Regulation.

(6) Part II of these Regulations, except Regulations 6, 23, 24, 28, 32, 37, 45, 48 and 49 shall not apply to any motor vehicle brought temporarily into Great Britain by a person resident abroad and intending to make only a temporary stay in Great Britain while the said vehicle is being used by such person during his stay, provided that such vehicle complies in every respect with the requirements of paragraphs I, III and VIII of Article 3 of the International Convention Relative to Motor Traffic concluded at Paris on 24th April, 1926.

(7) The requirements of the Motor Vehicles (Direction Indicator and Stop Light) Regulations, 1935, relating to direction indicators shall not apply to motor vehicles brought temporarily into Great Britain by persons resident abroad and intending to make only a temporary stay in Great Britain while the said vehicles are being used by such persons during their stay. [1900]

## PART II

### *Regulations governing the construction, weight and equipment of motor vehicles and trailers*

6. The overall length of a motor vehicle with four wheels shall not exceed 27 feet 6 inches and of a motor vehicle with more than four wheels shall not exceed 30 feet. The overall length of an articulated vehicle shall not exceed 33 feet.

Provided that—

(a) the total overall length of any eight-wheeled articulated vehicle registered before 1st January, 1931, may equal but shall not exceed 36 feet.

(b) this Regulation shall not apply in the case of an articulated vehicle constructed and normally used for the conveyance of indivisible loads of exceptional length,

(i) if all the wheels of the vehicle are fitted with pneumatic tyres, and

(ii) if all the wheels of the vehicle are not fitted with pneumatic tyres but the vehicle is not driven at a speed exceeding 12 m.p.h. [1901]

7. Every motor vehicle or trailer with more than four wheels and every trailer having more than two wheels being part of an articulated vehicle



shall be provided with such compensating arrangement as will ensure that all the wheels will remain in contact with the road surface and under the most adverse conditions will not be subjected to abnormal variation of load.

Provided that this Regulation shall not apply to any steerable wheel of a motor vehicle if the load on such wheel does not exceed  $2\frac{1}{2}$  tons. [1902]

8. Every motor vehicle and every trailer drawn thereby shall be equipped with suitable and sufficient springs between each wheel and the frame of the vehicle.

Provided that this Regulation shall not apply to :—

- (i) any vehicle registered on or before 1st January, 1932 ;
- (ii) any motor tractor not exceeding 4 tons in weight unladen if all unsprung wheels of such tractor are equipped with pneumatic tyres ;
- (iii) any land locomotive, land tractor, land implement, agricultural trailer or trailer used solely for the haulage of felled trees ;
- (iv) any motor tractor not exceeding 4 tons in weight unladen used in connection with railway shunting operations which is only used on a road when passing from one portion of the railway track to another for the purpose of such operations ;
- (v) motor cycles ;
- (vi) mobile cranes ;
- (vii) vehicles designed for use in works or in private premises and used on a road only in passing from one part of the works or premises to another, or to works or premises in the immediate neighbourhood ;
- (viii) any vehicle not exceeding 4 tons in weight unladen specially designed for and mainly used in operations which necessitate working on rough ground or unmade roads if all the wheels are equipped with pneumatic tyres and it is not driven or drawn at a speed exceeding 20 miles per hour. [1903]

9. Every motor vehicle shall be equipped with a braking system (which may be one of the braking systems hereinafter prescribed) so designed and constructed that it can at all times be set so as effectually to prevent two at least, or in the case of a vehicle with only three wheels one, of the wheels from revolving when the vehicle is not being driven or is left unattended.

Provided that this Regulation shall not apply to :—

- (i) motor bicycles with or without sidecars attached ;
- (ii) invalid carriages ; or
- (iii) land locomotives registered on or before 1st January, 1932. [1904]

10. Every motor vehicle registered on or after 1st October, 1937, which is fitted with a servo braking system which embodies a vacuum or pressure reservoir or reservoirs shall be provided with a warning device so placed as to be readily visible to the driver of the vehicle when in the driving seat in order to indicate any impending failure or deficiency in the vacuum or pressure system. [1905]

11.—(1) To every motor vehicle registered on or after 1st October, 1937, other than :—

- (a) a land tractor ;
- (b) an invalid carriage ;
- (c) a motor cycle, the cylinder capacity of the engine of which does not exceed 100 c.c. ;
- (d) a motor cycle neither constructed or adapted for use nor used for the carriage of a driver or passenger ;
- (e) a vehicle which it is at all times unlawful to drive at a speed exceeding 12 m.p.h. ; or
- (f) a vehicle which is incapable by reason of its construction of exceeding a speed of 12 m.p.h. on the level under its own power ;

there shall be fitted an instrument so constructed and in such a position as at all times readily to indicate to the driver of the vehicle within a margin of accuracy of plus or minus ten per cent. if and when he is driving at a speed in excess of that specified in paragraph (2) hereof.

(2) The speed to which reference is made in paragraph (1) hereof shall be such speed as is specified in the First Schedule to the Road Traffic Act, 1930, as the maximum speed for the vehicle to which the instrument aforesaid is fitted in compliance with this Regulation, or if no such speed is prescribed, 30 m.p.h.

Provided that when, by reason of the fact that a vehicle to which this Regulation applies is drawing a trailer or trailers the maximum speed at which it is lawful to drive such vehicle is lower than the speed at which it is lawful to drive such vehicle without such trailer or trailers, the instrument aforesaid shall not be required to indicate such lower speed. [1906]

12. All wheels of a motor vehicle and all wheels of a trailer which are equipped with tyres other than pneumatic tyres shall have a rim diameter of not less than 670 mm.

Provided that this Regulation shall not apply :—

- (i) (a) to any motor vehicle registered on or before 2nd January, 1933 ;  
and
- (b) to any trailer constructed before 1st January, 1933 ;
- (ii) to any wheel fitted to a motor car registered on or before 1st July, 1936, if the diameter of the wheel inclusive of the tyre is not less than 670 mm. ;
- (iii) to any motor vehicle or trailer not exceeding 30 cwts. in weight unladen designed for use in works or on private premises and used on a road only in passing from one part of the works or premises to another or to works or premises in the immediate neighbourhood ;
- (iv) to any motor vehicle or trailer designed for use and used by or on behalf of a local authority solely in connection with street cleansing, the collection or disposal of refuse or the collection or disposal of the contents of gullies or cesspools ;
- (v) to any mobile crane ; or
- (vi) to any land implement. [1907]

13. Every motor vehicle which exceeds 8 cwts. in weight unladen shall be capable of being so worked that it may travel either forwards or backwards. [1908]

14. Every motor vehicle shall be so designed and constructed that the driver thereof while controlling the vehicle can at all times have a full view of the road and traffic ahead of the motor vehicle. [1909]

15. Every motor vehicle, other than a motor cycle, shall be equipped either internally or externally with a mirror so constructed and fitted to the motor vehicle as to assist the driver if he so desires to become aware of traffic to the rear of the vehicle.

Provided that this Regulation shall not apply to :—

- (i) land locomotives and land tractors ;
- (ii) a motor vehicle when drawing a trailer if a person is carried on the trailer in a position which affords an uninterrupted view to the rear and such person is provided with efficient means of communicating to the driver the effect of signals given by the drivers of other vehicles in rear thereof ; or
- (iii) a motor vehicle designed for use in works or in private premises and used on a road only in passing from one part of the works or premises to another, or to works or premises in the immediate neighbourhood, if the driver can easily obtain a clear view of traffic to the rear. [1910]

16. The glass of wind-screens and windows facing to the front on the outside of any motor vehicle except glass fitted to the upper deck of a double decked vehicle, shall be safety glass.

For the purposes of this Regulation any wind-screen or window at the front of the vehicle the inner surface of which is at an angle exceeding 30 degrees to the longitudinal axis of the vehicle shall be deemed to face to the front. [1911]

17. An efficient automatic wind-screen wiper shall be fitted to every vehicle which is so constructed that the driver cannot, by opening the wind-screen or otherwise, obtain an adequate view to the front of the vehicle without looking through the wind-screen. [1912]

18. Every motor vehicle other than a locomotive or a land tractor shall be fitted with an instrument capable of giving audible and sufficient warning of its approach or position.

Provided that no such instrument shall consist of :—

- (i) a gong or bell, except in the case of a motor vehicle used solely for fire brigade, ambulance, salvage corps or police purposes, or being used for the purposes of the Land Incident Company of the Royal Army Service Corps ; or
- (ii) a siren, except in the case of a vehicle used solely for fire brigade, salvage corps or police purposes.

Provided also that nothing in this Regulation shall apply to any motor vehicle designed for use in works or in private premises and used on a road only in passing from one part of the works or premises to another, or to works or premises in the immediate neighbourhood. [1913]

19. Every vehicle propelled by an internal combustion engine shall be fitted with a silencer, expansion chamber or other contrivance suitable and sufficient for reducing as far as may be reasonable the noise caused by the escape of the exhaust gases from the engine. [1914]

20. Every motor vehicle shall be so constructed that no avoidable smoke or visible vapour is emitted therefrom. [1915]

21. Every motor vehicle using solid fuel shall be fitted with an efficient appliance for the purpose of preventing the emission of sparks or grit, and also with a tray or shield to prevent ashes and cinders from falling on to the road. [1916]

22. No motor vehicle registered on or after 15th January, 1931, or trailer shall be equipped with any closet, urinal, lavatory basin or sink, unless the following requirements are complied with, that is to say :—

- (a) Every closet pan or urinal pan shall empty into a tank carried by such motor vehicle or trailer as the case may be, such tank—
  - (i) being efficiently ventilated by means of a pipe, the outlet of which is outside the vehicle, and
  - (ii) containing non-inflammable and non-irritant chemicals, of such character and in such quantity as to form at all times an efficient deodorant and germicide in respect of the contents of the tank.
- (b) No lavatory basin or sink shall drain into the tank specified in paragraph (a) hereof. [1917]

#### *Locomotives*

23. The overall width of a locomotive shall not exceed 9 feet. [1918]

24. The unladen weight of a locomotive shall not exceed  $15\frac{1}{2}$  tons, or where all the wheels are fitted with tyres of soft or elastic material  $17\frac{1}{2}$  tons.

Provided that :—

- (i) these weights may be exceeded by  $1\frac{1}{2}$  tons if the locomotive carries as a permanent fitting any jib crane, dynamo or extra winding drum or any one or more of such fittings, and
- (ii) in the case of cable ploughing engines the weight of any winding or windlass gear shall not be included in computing the unladen weight. [1919]

25. Not more than three quarters of the total weight of a locomotive shall be transmitted to the road surface by any two wheels. [1920]

26.—(1) Except as hereinafter provided, every wheel of a locomotive shall be equipped with a tyre of soft or elastic material which either—

- (i) extends continuously round the circumference of the wheel, or
- (ii) is fitted in sections in such manner that—
  - (a) at no point is any section separated by more than  $\frac{3}{4}$  inch from any adjacent section, and
  - (b) the aggregate extent of all spaces between the sections measured along any line taken round the outer surface of the tyre and parallel to its edge does not exceed 6 inches.

(2) Paragraph (2) of this Regulation shall not apply to a land locomotive if—

- (i) the tyre of every steering wheel is smooth-soled and where the tyre touches the surface of the road it is not less than 5 inches in width and
- (ii) the tyre of every driving wheel is not less than 12 inches in width and is either—
  - (a) smooth-soled, or
  - (b) shod with diagonal cross bars of not less than 3 inches in width nor more than  $\frac{3}{4}$  inch in thickness, extending the full breadth of the tyre and so arranged that the space intervening between adjacent cross bars is not more than 3 inches, or
  - (c) shod with diagonal cross bars of soft or elastic material of not less than  $2\frac{1}{2}$  inches in width, extending the full breadth of the tyre and so arranged that the space between adjacent cross bars is not more than 3 inches. [1921]

27. Every locomotive shall be equipped with an efficient braking system, the brakes of which act upon all the wheels of the vehicle other than the steering wheels, so designed and constructed that the application of the brakes will bring the vehicle to rest within a reasonable distance.

Provided that this Regulation shall not apply to a locomotive registered on or before 2nd January, 1933, if the locomotive is propelled by steam and the engine thereof is capable of being reversed. [1922]

#### *Motor Tractors*

28. The overall width of a motor tractor shall not exceed 7 feet 6 inches. [1923]

29. The overhang of a motor tractor shall not exceed 6 feet. [1924]

30.—(1) Every motor tractor shall be equipped with an efficient braking system or efficient braking systems in either case having two means of operation, so designed and constructed that notwithstanding the failure of any part (other than a fixed member or a brake shoe anchor pin) through or by means of which the force necessary to apply the brakes is transmitted, there shall still be available for application by the driver to not less than half the number of the wheels of the vehicle, brakes sufficient under the most adverse conditions to bring the vehicle to rest within a reasonable distance.

Provided that this paragraph shall not apply in the case of a road roller or a land tractor, not propelled by steam, if the vehicle is equipped with one braking system with one means of operation.

(2) The application of one means of operation shall not affect or operate the pedal or hand lever of the other means of operation.

(3) In the case of vehicles registered on or after 1st April, 1938, no braking system shall be rendered ineffective by the non-rotation of the engine.

Provided that this paragraph shall not apply in the case of the vehicles referred to in sub-paragraph (ii) of paragraph (7) hereof.

(4) In the case of a motor tractor registered on or after 1st April, 1938, all the brakes which are operated by one of the means of operation shall be capable of being applied by direct mechanical action without the intervention of any hydraulic, electric or pneumatic device.

(5) Where any brake shoe is capable of being applied by more than one means of operation, all the wheels of the motor tractor shall be fitted with brakes all of which are operated by one of the means of operation.

Provided that where means of operation are provided in addition to those prescribed by this Regulation such additional means of operation may be disregarded for the purposes of this paragraph.

(6) In the case of a motor tractor registered after 14th January, 1931, other than a land tractor, one at least of the means of operation shall be capable of causing brakes to be applied directly, and not through the transmission gear, to not less than half the number of the wheels of the vehicle.

Provided that where a motor tractor has more than 4 wheels and the drive is transmitted to all wheels other than the steering wheels without the interposition of a differential driving gear or similar mechanism between the axles carrying the driving wheels, it shall be deemed to be a sufficient compliance with this paragraph if the brakes applied by one means of operation act directly on two driving wheels on opposite sides of the vehicle and the brakes applied by the other means of operation act directly on all other driving wheels.

(7) For the purpose of this Regulation—

(i) in the case of a motor tractor registered on or after 1st October, 1938,

(a) not more than one front wheel shall be included in half the number of the wheels of the vehicle for the purposes aforesaid, and

(b) every moving shaft to which any part of a braking system or any means of operation thereof is connected or by which it is supported shall be deemed to be part of that system.

(ii) in the case of a motor tractor propelled by steam the engine shall be deemed to be an efficient braking system with one means of operation if the engine is capable of being reversed and, in the case of a motor tractor registered on or after 1st October, 1943, is incapable of being disconnected from any of the driving wheels of the vehicle except by the sustained effort of the driver. [1925]

31. Every wheel of a motor tractor shall be equipped with pneumatic tyres or tyres of soft or elastic material.

Provided that this Regulation shall not apply to a land tractor if—

(i) the tyre of every steering wheel is smooth-soled and where the tyre touches the surface of the road it is not less than  $2\frac{1}{2}$  inches in width, and

(ii) the tyre of every driving wheel, in the case of vehicles exceeding 3 tons in weight unladen is not less than 6 inches in width, and

in the case of vehicles not exceeding 3 tons in weight unladen is not less than 3 inches in width, and is either—

- (i) smooth soled,
- (ii) shod with diagonal cross bars of not less than 3 inches in width nor more than  $\frac{3}{4}$  inch in thickness, extending the full breadth of the tyre and so arranged that the space between adjacent cross bars is not more than 3 inches, or
- (iii) shod with diagonal cross bars of soft or elastic material of not less than  $2\frac{1}{2}$  inches in width, extending the full breadth of the tyre and so arranged that the space between adjacent cross bars is not more than 3 inches. [1926]

### *Heavy Motor Cars*

**32.** The overall width of a heavy motor car shall not exceed 7 feet 6 inches.

Provided that in the case of a vehicle registered on or before 1st July, 1932, this width may be exceeded by 6 inches in cases where the excess width has been necessarily caused by the conversion of the vehicle from use with solid tyres to use with pneumatic tyres.

Provided also that in the case of a vehicle propelled by steam, using solid fuel and registered before 1st January, 1939, the aforesaid width of 7 feet 6 inches may be exceeded by 3 inches in cases where the excess width is due solely to projection of the wheels or tyres beyond the sides of the vehicle.

Provided also that in the case of a vehicle which is a public service vehicle or a vehicle which is constructed or adapted for use as such a vehicle or a chassis which is constructed for such a vehicle the aforesaid width of 7 feet 6 inches may be exceeded by 6 inches. [1927]

**33.** The overhang of a heavy motor car shall not exceed 50 per cent. of the distance between the plane perpendicular to the longitudinal axis of the vehicle which passes through the centre or centres of the front wheel or wheels and the foremost vertical plane from which the overhang is to be measured as defined in Regulation 3 of these Regulations.

Provided that—

- (i) in the case of a heavy motor car registered before 1st October, 1938, it shall be a sufficient compliance with this Regulation if the overhang does not exceed  $\frac{7}{24}$ ths of the overall length of the vehicle ;
- (ii) this Regulation shall not apply to a heavy motor car registered before 15th August, 1928 ;
- (iii) this Regulation shall not apply to a heavy motor car designed for use and used by or on behalf of a local authority solely in connection with street cleansing, the collection or disposal of refuse or the collection or disposal of the contents of gullies or cesspools ;
- (iv) in the case of a vehicle designed for use and mainly used by or on behalf of a public authority for the purpose of heating a road or other like surface in the process of construction, repair or maintenance, no part of the heating plant shall be taken into account when calculating the overhang ; and
- (v) this Regulation shall not apply to a vehicle designed so that it can dispose of its load by tipping to the rear, if the overhang does not exceed 45 inches. [1928]

**34.** Every heavy motor car registered on or before 15th August, 1928, shall be equipped with an efficient braking system or efficient braking systems with two means of operation sufficient under the most adverse conditions to bring the vehicle to rest within a reasonable distance. Save as aforesaid :—

- (1) Every heavy motor car shall be equipped with an efficient braking system or efficient braking systems in either case having two means of operation so designed and constructed that notwithstanding the failure of any part (other than a fixed member or a brake shoe anchor pin) through or by means of which the force necessary to apply the brakes is transmitted, there shall still be available for application by the driver to not less than half the number of the wheels of the vehicle brakes sufficient under the most adverse conditions to bring the vehicle to rest within a reasonable distance.
- (2) The application of one means of operation shall not affect or operate the pedal or hand lever of the other means of operation.
- (3) In the case of vehicles registered on or after 1st April, 1938, no braking system shall be rendered ineffective by the non-rotation of the engine.  
Provided that this paragraph shall not apply in the case of the vehicles referred to in sub-paragraph (ii) of paragraph (7) hereof.
- (4) All the brakes of a heavy motor car which are operated by one means of operation shall be capable of being applied by direct mechanical action without the intervention of any hydraulic, electric or pneumatic device.
- (5) Where any brake shoe is capable of being applied by more than one means of operation all the wheels of the heavy motor car shall be fitted with brakes all of which are operated by one of the means of operation.

Provided that—

- (i) in the case of vehicles with more than six wheels having at least four steering wheels it shall be a sufficient compliance with this paragraph if brakes are fitted to all the wheels, other than two steering wheels which are situated on opposite sides of the vehicle, and all such brakes are operated by one of the means of operation,
  - (ii) where a heavy motor car has more than four wheels and the drive is transmitted to all wheels other than the steering wheels without the interposition of a differential driving gear or similar mechanism between the axles carrying the driving wheels it shall be deemed to be a sufficient compliance with this paragraph if one means of operation operates the brakes on two driving wheels situated on opposite sides of the vehicle and the other means of operation operates brakes on all the other wheels required to be fitted with brakes by this paragraph, and
  - (iii) where means of operation are provided in addition to those prescribed by this Regulation such additional means of operation may be disregarded for the purposes of this paragraph.
- (6) One at least of the means of operation shall be capable of causing brakes to be applied directly and not through the transmission gear to not less than half the number of the wheels of the vehicle.

Provided that where a heavy motor car has more than four wheels and the drive is transmitted to all wheels other than the steering wheels without the interposition of a differential driving gear or similar mechanism between the axles carrying the driving wheels it shall be deemed to be a sufficient compliance with this paragraph if the brakes applied by one means of operation act directly on two driving wheels on opposite sides of the vehicle and the brakes applied by the other means of operation act directly on all other driving wheels.



(7) For the purpose of this Regulation—

- (i) (a) not more than one front wheel shall be included in half the number of the wheels of the vehicle for the purposes aforesaid and
- (b) every moving shaft to which any part of a braking system or any means of operation thereof is connected or by which it is supported shall be deemed to be part of that system ;
- (ii) in the case of a heavy motor car propelled by steam and not used as a public service vehicle the engine shall be deemed to be an efficient braking system with one means of operation if the engine is capable of being reversed and, in the case of a heavy motor car registered on or after 1st January, 1927, is incapable of being disconnected from any of the driving wheels of the vehicle except by the sustained effort of the driver. [1929]

35. All the wheels of a heavy motor car shall be equipped with pneumatic tyres.

Provided that this Regulation shall not apply to a heavy motor car registered on or before 2nd January, 1933, if the vehicle is equipped with tyres of soft or elastic material.

Provided also that this Regulation shall not apply—

- (i) to a heavy motor car exceeding 4 tons in weight unladen mainly used in operations which necessitate working on rough ground or unmade roads, or
- (ii) to a vehicle designed for use and used by or on behalf of a local authority solely in connection with street cleansing, the collection or disposal of refuse or the collection or disposal of the contents of gullies or cesspools, to a turntable fire escape or to a tower wagon,

if the vehicle is in each case equipped with tyres of soft or elastic material on every wheel. [1930]

36. A heavy motor car shall be provided with wings or other similar fittings to catch, so far as practicable, mud or water thrown up by the rotation of the wheels, unless adequate protection is afforded by the body of the vehicle.

Provided that this Regulation shall not apply in relation to the rear wheels of any heavy motor car for the time being forming part of an articulated vehicle if the trailer forming the remaining part of the articulated vehicle is used only for, or empty in connection with, the carriage of round timber.

Provided also that this Regulation shall not apply in the case of a vehicle in an unfinished condition proceeding to a works for completion. [1931]

#### *Motor Cars*

37. The overall width of a motor car shall not exceed 7 feet 6 inches.

Provided that in the case of a vehicle which is a public service vehicle or a vehicle which is constructed or adapted for use as such a vehicle or a chassis which is constructed for such a vehicle this width may be exceeded by 6 inches. [1932]

38. The overhang of a motor car shall not exceed 50 per cent. of the distance between the plane perpendicular to the longitudinal axis of the vehicle which passes through the centre or centres of the front wheel or wheels and the foremost vertical plane from which the overhang is to be measured as defined in Regulation 3 of these Regulations.

Provided that—

- (i) in the case of a motor car registered before 1st October, 1938, it shall be sufficient compliance with this Regulation if the overhang does not exceed 7/24ths of the overall length of the vehicle ;
- (ii) this Regulation shall not apply to a motor car registered on or before 2nd January, 1933 ;
- (iii) this Regulation shall not apply to a motor car designed for use and used by or on behalf of a local authority solely in connection with street cleansing, the collection or disposal of refuse, or the collection or disposal of the contents of gullies or cesspools, or as an ambulance and
- (iv) in the case of a motor car not exceeding 20 feet in overall length, the overhang may be increased by not more than 9 inches, but shall in no case exceed 7/24ths of the overall length. [1933]

39.—(1) Every motor car shall be equipped with an efficient braking system or efficient braking systems in either case having two means of operation so designed and constructed that notwithstanding the failure of any part (other than a fixed member or a brake shoe anchor pin) through or by means of which the force necessary to apply the brakes is transmitted, there shall still be available for application by the driver to not less than half the number of the wheels of the vehicle brakes sufficient under the most adverse conditions to bring the vehicle to rest within a reasonable distance.

Provided that in the event of such failure as aforesaid it shall not be necessary for brakes to be available for application by the driver—

- (i) in the case of a motor car registered before 1st October, 1938, to more than two wheels ;
- (ii) in the case of a vehicle having less than four wheels, to more than one wheel.

(2) The application of one means of operation shall not affect or operate the pedal or hand lever of the other means of operation.

(3) In the case of vehicles registered on or after 1st April, 1938, no braking system shall be rendered ineffective by the non-rotation of the engine.

Provided that this paragraph shall not apply in the case of the vehicles referred to in sub-paragraph (ii) of paragraph (7) hereof.

(4) All the brakes of a motor car which are operated by one of the means of operation shall be capable of being applied by direct mechanical action without the intervention of any hydraulic, electric or pneumatic device.

(5) In the case of a motor car with more than three wheels where any brake shoe is capable of being applied by more than one means of operation all the wheels shall be fitted with brakes all of which are operated by one of the means of operation.

Provided that—

- (i) where a motor car has more than six wheels, at least four of which are steering wheels, it shall be a sufficient compliance with this paragraph if brakes are fitted to all the wheels other than two steering wheels which are situated on opposite sides of the vehicle, and all such brakes are operated by one of the means of operation,
- (ii) where a motor car has more than four wheels and the drive is transmitted to all wheels other than the steering wheels without the interposition of a differential driving gear or similar mechanism between the axles carrying the driving wheels it shall be deemed to be a sufficient compliance with this paragraph if one means of operation operates the brakes on two driving wheels situated on opposite sides of the vehicle and the other means of operation operates brakes on all the other wheels required to be fitted with brakes by this paragraph, and

- (iii) where means of operation are provided in addition to those prescribed by this Regulation such additional means of operation may be disregarded for the purposes of this paragraph.

(6) One at least of the means of operation shall be capable of causing brakes to be applied directly and not through the transmission gear to not less than half the number of the wheels of the vehicle.

Provided that in the case of a motor car having more than four wheels and registered before 1st October, 1938, it shall be deemed to be a sufficient compliance with this paragraph if one of the means of operation applies brakes directly and not through the transmission gear to not less than two of the wheels of the vehicle.

Provided also that where a motor car has more than four wheels and the drive is transmitted to all wheels other than the steering wheels without the interposition of a differential driving gear or similar mechanism between the axles carrying the driving wheels it shall be deemed to be a sufficient compliance with this paragraph if the brakes applied by one means of operation act directly on two driving wheels on opposite sides of the vehicle and the brakes applied by the other means of operation act directly on all other driving wheels.

(7) For the purpose of this Regulation—

- (i) in the case of a motor car registered on or after 1st October, 1938,

(a) except in the case of a motor car the unladen weight of which does not exceed one ton or which is a passenger vehicle constructed or adapted to carry not more than seven passengers exclusive of the driver, not more than one front wheel shall be included in half the number of the wheels of the vehicle for the purposes aforesaid :

(b) every moving shaft to which any part of a braking system or any means of operation thereof is connected or by which it is supported shall be deemed to be part of that system ;

- (ii) in the case of a motor car propelled by steam and not used as a public service vehicle, the engine shall be deemed to be an efficient braking system with one means of operation if the engine is capable of being reversed and is incapable of being disconnected from any of the driving wheels of the vehicle except by the sustained effort of the driver. [1934]

40. All the wheels of a motor car the unladen weight of which exceeds one ton shall be equipped with pneumatic tyres.

Provided that this Regulation shall not apply to any motor car registered on or before 2nd January, 1933, if the vehicle is equipped with tyres of soft or elastic material.

Provided also that this Regulation shall not apply to motor cars not exceeding 30 cwts. in weight unladen designed for use in works or on private premises and used on a road only in passing from one part of the works or premises to another or to works or premises in the immediate neighbourhood, or to motor cars designed for use and used by or on behalf of a local authority solely in connection with street cleansing, the collection or disposal of refuse or the collection or disposal of the contents of gullies or cesspools if the vehicle is in each case equipped with tyres of soft or elastic material on every wheel. [1935]

41. A motor car shall be provided with wings or other similar fittings to catch, so far as practicable, mud or water thrown up by the rotation of the wheels unless adequate protection is afforded by the body of the vehicle.

Provided that this Regulation shall not apply in relation to the rear wheels of any motor car for the time being forming part of an articulated vehicle if

the trailer forming the remaining part of the articulated vehicle is used only for, or empty in connection with, the carriage of round timber.

Provided also that this Regulation shall not apply in the case of a vehicle in an unfinished condition proceeding to a works for completion. [1936]

### *Motor Cycles*

42.—(1) Every motor cycle shall be equipped with an efficient braking system or efficient braking systems in either case having two means of operation so designed and constructed that notwithstanding the failure of any part (other than a fixed member or a brake shoe anchor pin) through or by means of which the force necessary to apply the brakes is transmitted, there shall still be available for application by the driver to at least one wheel of the vehicle brakes sufficient under the most adverse conditions to bring the vehicle to rest within a reasonable distance.

(2) The application of one means of operation shall not affect or operate the pedal or hand lever of the other means of operation. [1937]

43. Every wheel of a motor cycle shall be equipped with pneumatic tyres. [1938]

44. Every motor cycle shall be equipped with wings or other similar fittings to catch, so far as practicable, mud or water thrown up by the rotation of the wheels. [1939]

### *Invalid Carriages*

45. The overall width of an invalid carriage shall not exceed 7 feet 2 inches. [1940]

46. Every invalid carriage shall be equipped with an efficient braking system, the brakes of which act on at least two wheels of the vehicle, so designed and constructed that the application of the brakes shall bring the vehicle to rest within a reasonable distance. [1941]

47. Every invalid carriage shall be equipped with wings or other similar fittings to catch, so far as practicable, mud or water thrown up by the rotation of the wheels. [1942]

### *Trailers*

48. The overall length of a trailer (excluding any draw bar) shall not exceed 22 feet.

Provided that this Regulation shall not apply to a trailer constructed and normally used for the conveyance of indivisible loads of exceptional length, to a land implement, to a trailer forming part of an articulated vehicle, to any broken down vehicle which is being drawn by a motor vehicle in consequence of the breakdown or to a trailer which is a trolley vehicle in course of construction or delivery, or to any trailer being a drying or mixing plant for the production of asphalt or of bituminous or tar macadam, used mainly for the construction, repair or maintenance of roads, or to any road planing machine so used, provided that the total overall length of such trailer and any drawing vehicle when coupled thereto shall not exceed 60 feet inclusive of the draw bar. [1943]

49. The overall width of a trailer (other than a land implement) shall not exceed 7 feet 6 inches.

Provided that the overall width of a trailer which is in use by a travelling showman in connection with his business and was in such use before 15th January, 1931, may equal but shall not exceed 8 feet 9 inches.

Provided also that in the case of a trailer constructed before 1st January, 1933, which has been converted from use with solid tyres to use with pneumatic tyres the overall width may equal but shall not exceed 8 feet if the width

of no part of the vehicle exceeds 7 feet 6 inches except where such increase is rendered necessary by the conversion.

Provided also that this Regulation shall not apply to any broken down vehicle which is being drawn by a motor vehicle in consequence of the breakdown. [1944]

50.—(1) Save as hereinafter provided in paragraph (2) hereof, every trailer exceeding 2 cwts. in weight unladen shall have an efficient braking system the brakes of which are capable of being applied when it is being drawn—

- (i) to at least two wheels in the case of a trailer having not more than four wheels;
- (ii) to at least four wheels in the case of a trailer having more than four wheels, and
- (iii) in the case of trailers constructed after 1st April, 1938, to at least half the number of wheels of the trailer,

so constructed that—

- (a) the brakes can be applied either by the driver of the drawing vehicle or by some other person on such vehicle or the trailer.

Provided that this sub-paragraph shall not apply in the case of a trailer not exceeding 1 ton in weight unladen or in the case of a trailer not constructed or adapted to carry any load, other than plant or other special appliance or apparatus which is a permanent or essentially permanent fixture, and not exceeding 45 cwts. in total weight, if in either case the brakes of the trailer automatically come into operation on the overrun of the trailer; and

- (b) in the case of a trailer forming part of an articulated vehicle and being permanently attached to the drawing vehicle, the brakes are capable of being set so as effectively to prevent two at least of the wheels from revolving when the trailer is not being drawn; and
- (c) in the case of any other trailer the brakes are capable of being set so as effectively to prevent two at least of the wheels from revolving when the trailer whether it is attached to the drawing vehicle or not, is not being drawn.

In this paragraph the expression “permanently attached” means that the trailer can only be detached from the drawing vehicle by an operation involving the use of facilities which are normally found only in a workshop.

(2) Paragraph (1) hereof shall not apply—

- (i) to any land implement drawn by a motor vehicle;
- (ii) to any trailer designed for use and used by or on behalf of a local authority for street cleansing which does not carry any load other than its necessary gear and equipment;
- (iii) to any broken down vehicle which is being drawn by a motor vehicle in consequence of the breakdown;
- (iv) until 1st January, 1952, to any agricultural trailer constructed before 1st July, 1947, drawn by a motor tractor if:—

- (a) its laden weight does not exceed 4 tons;
- (b) it is the only trailer so drawn; and
- (c) it is not drawn at a speed exceeding 10 miles per hour;

- (v) to any trailer used only for the carriage of plant and materials for producing gas for the propulsion of the drawing vehicle, if the drawing vehicle is either a goods vehicle weighing not less than 2 tons in weight unladen or a public service vehicle. For the purpose of this sub-paragraph the terms “goods vehicle” means a vehicle constructed or adapted for use for the conveyance of goods or burden of any description.

(3) In the case of trailers constructed on or after 1st April, 1938, the braking system shall be so constructed that it is not rendered ineffective by the non-rotation of the engine of the drawing vehicle. [1945]

51. All the wheels of a trailer when the trailer is being drawn on a road shall be equipped with pneumatic tyres or tyres of soft or elastic material.

Provided that this Regulation shall not apply to—

- (i) any land implement or agricultural trailer ;
- (ii) any trailer constructed before 15th January, 1931, which is specially designed for the conveyance of horses and cattle and is used either for that purpose or for some other purpose connected with agriculture ;
- (iii) any trailer constructed before 15th January, 1931, which is specially designed and used for the conveyance of furniture and other similar household effects ;
- (iv) any trailer used for the purpose of carrying water for a road roller which is being used in connection with the construction, maintenance or repair of roads. [1946]

52. All the wheels of a trailer drawn by a heavy motor car or a motor car and constructed after 1st January, 1933, shall be equipped with pneumatic tyres.

Provided that this Regulation shall not apply to trailers—

- (i) designed for use in works or on private premises and used on a road only in passing from one part of the works or premises to another, or to works or premises in the immediate neighbourhood,
- (ii) designed for use and used by or on behalf of a local authority solely in connection with street cleansing, the collection or disposal of refuse, or the collection or disposal of the contents of gullies or cesspools,
- (iii) drawn by heavy motor cars all the wheels of which are not required to be equipped with pneumatic tyres, or
- (iv) used for the purpose of carrying water for a road roller which is being used in connection with the construction, maintenance or repair of roads. [1947]

53. The rear wheels, or in the case of a two-wheeled trailer the wheels, of every trailer shall be provided with wings or other similar fittings to catch, so far as practicable, mud or water thrown up by the rotation of the wheels, unless adequate protection is afforded by the body of the trailer.

Provided that this Regulation shall not apply to trailers in an unfinished condition proceeding to a works for completion, land implements, living vans, watercarts, trailers used only for, or empty in connection with, the carriage of round timber, trailer pumps used for Fire Brigade purposes, or trailers drawn by a vehicle the maximum speed of which is restricted by virtue of the provisions of the First Schedule to the Road Traffic Act, 1930, to 12 m.p.h. or less. [1948]

### PART III

#### *Regulations governing the use of motor vehicles and trailers*

54. The owner of a locomotive shall cause the unladen weight of the vehicle to be painted or otherwise plainly marked upon some conspicuous place on the left or near side of the vehicle. [1949]

55. The owner of a motor tractor shall cause the weight of the vehicle unladen and the maximum speed at which it may be driven when not drawing a trailer to be painted or otherwise plainly marked upon some conspicuous place on the left or near side of the vehicle, and such marking shall include the words "without trailer". [1950]

56. The owner of a heavy motor car shall cause the weight of the vehicle unladen and the maximum speed at which it may be driven when not drawing a trailer to be painted or otherwise plainly marked upon some conspicuous place on the left or near side of the vehicle.

Provided that this Regulation shall not apply to a vehicle not registered under the Roads Act, 1920. [1951]

57. The owner of a trailer which, in compliance with Regulation 50 hereof, is fitted with overrun brakes shall cause the unladen weight of the trailer to be painted or otherwise plainly marked upon some conspicuous place on the left or near side of it. [1952]

58. On every vehicle (other than an invalid carriage, a vehicle used solely for fire brigade purposes or a hearse) which is not drawing a trailer and which is by virtue of the provisions of the First Schedule to the Road Traffic Act, 1930, restricted when not drawing a trailer to a speed limit of 20 m.p.h., and on every trailer (other than a trailer specially constructed for the carriage of round timber) attached to a drawing vehicle by partial super-imposition in such manner as to cause a substantial part of the weight to be borne by the vehicle if the drawing vehicle is by virtue of the provisions of subparagraph (2) of paragraph 2 of the said Schedule restricted to a speed limit of 20 m.p.h., there shall be exhibited in a conspicuous position at the rear thereof a disc of not less than 8 inches in diameter which complies in all respects with the following requirements :—

- (a) it shall be fixed in a vertical position facing squarely to the rear and shall be kept clean and unobscured so as to be plainly visible from behind the vehicle ;
- (b) The surface facing to the rear shall be either black or white, and if black shall display thereon the number " 20 " in white and if white shall display thereon the said number in black, and for the purpose of this requirement " white " shall include the colour of polished aluminium or chromium plating ;
- (c) each figure of the said number shall be  $3\frac{1}{2}$  inches in height and  $2\frac{1}{2}$  inches in total width and the width of every part of each figure shall be  $\frac{3}{8}$  inch ;
- (d) each figure shall be raised not less than  $\frac{1}{8}$  inch from the surface of the disc, but each edge of the figure may be rounded or sloped for a width of  $\frac{1}{8}$  inch. [1953]

59.—(1) Every heavy motor car registered on or after 1st October, 1938, shall have permanently attached to each wheel in a readily visible position a plate indicating the maximum nominal section of tyre for which the wheel is designed, or shall have the said maximum nominal section marked directly and indelibly on each wheel. Where a wheel is designed for more than one type of tyre the maximum nominal section in each type shall be indicated.

Provided that where the rim of the wheel is demountable the plate shall be fixed, or the marking made, on the rim of the wheel.

(2) No tyre shall be fitted to any wheel of a heavy motor car of a greater maximum nominal section than that indicated on the plate affixed to or marking made on the wheel in accordance with this Regulation. [1954]

60.—(1) When a motor vehicle is drawing a trailer or trailers on a road there shall be exhibited in a conspicuous position on the back of the trailer (or when more than one trailer is being drawn on the back of the rearmost trailer) a distinguishing mark in the form set out in the diagram contained in the Second Schedule to these Regulations.

(2) The reflex lenses indicated in the said diagram shall be  $\frac{3}{4}$  inch in diameter and the colour thereof shall be red.



(3) The mark shall be—

(i) fixed to a trailer so that—

- (a) the letter on the mark is vertical and easily distinguishable from behind the trailer ;
- (b) it is either on the centre line or to the off-side of the trailer ;
- (c) no part thereof is at a height exceeding 4 feet from the ground.

(ii) kept clean and unobscured,

Provided that this Regulation shall not apply to—

- (i) any trailer forming part of an articulated vehicle ;
- (ii) any broken down vehicle while being drawn in consequence of the breakdown ;
- (iii) any trailer drawn by a motor car constructed solely for the carriage of passengers and their effects and adapted to carry not more than seven passengers exclusive of the driver ;
- (iv) any trailer specially constructed for the carriage of round timber ;
- (v) land implements (except living vans) and agricultural trailers ;
- (vi) any water cart drawn by, and used for carrying water for, a road roller. [1955]

61. The maximum laden weight of a locomotive shall not exceed the unladen weight permitted by these Regulations by more than 8 tons. [1956]

62. The maximum total weight of all trailers, whether wheeled or track laying and whether laden or unladen, drawn by a locomotive whether wheeled or track laying shall not exceed 40 tons. [1957]

63. The total laden weight of a trailer whether wheeled or track laying together with that of any motor tractor, heavy motor car or motor car drawing such trailer in each case whether wheeled or track laying shall not exceed 22 tons.

Provided that in the case of a wheeled trailer drawn by a wheeled motor tractor, wheeled heavy motor car or wheeled motor car propelled by steam and using solid fuel, the total laden weight of the trailer together with that of the drawing vehicle may, if all the wheels of both vehicles are fitted with pneumatic tyres, equal but shall not exceed 24 tons.

Provided also that in the case of a wheeled trailer drawn by a wheeled motor tractor, wheeled heavy motor car or wheeled motor car which is propelled by gas the total laden weight of the trailer together with that of the drawing vehicle may, if all the wheels of both vehicles are fitted with pneumatic tyres, equal but shall not exceed 23 tons.

Provided further that in any case except that of an articulated vehicle, where the trailer is fitted with power-assisted brakes which can be operated by the driver of the drawing vehicle and are not rendered ineffective by the non-rotation of the engine of the drawing vehicle, the total laden weight of the trailer together with that of the drawing vehicle may, if the drawing vehicle is equipped with a warning device so placed as to be readily visible to the driver when in the driving seat in order to indicate an impending failure or deficiency in the vacuum or pressure system, equal but shall not exceed 32 tons. [1958]

64. In the case of a heavy motor car or motor car the weight transmitted to the road surface by any one wheel where no other wheel is in the same line transversely shall not exceed 4 tons, the weight so transmitted by any two wheels in line transversely shall not exceed 8 tons, and the sum of the weights so transmitted by all the wheels shall not exceed, in the case of a vehicle with not more than four wheels, 12 tons, in the case of a vehicle with more than four but not more than six wheels, 19 tons, and in the case of a vehicle with more than six wheels, 22 tons.

Provided that in the case of a heavy motor car or motor car propelled by steam and using solid fuel—

- (i) the sum of the weights transmitted to the road surface by all the wheels may equal but shall not exceed—
  - (a) in the case of a four-wheeled vehicle 14 tons and
  - (b) in the case of a six-wheeled vehicle 20 tons if the vehicle is not driven at a speed exceeding 12 m.p.h. at any time when all its wheels are not equipped with pneumatic tyres and its total weight exceeds either 12 tons or 19 tons as the case may be ; and
- (ii) the weight transmitted to the road surface by any two wheels in line transversely may equal but shall not exceed 9 tons.

Provided also that in the case of a heavy motor car or motor car carrying gas equipment for the purpose of its propulsion—

- (i) the sum of the weights transmitted to the road surface by all the wheels of the vehicle may equal but shall not exceed—
  - (a) in the case of a vehicle with not more than four wheels, 12½ tons,
  - (b) in the case of a vehicle with more than four but not more than six wheels, 20 tons and
  - (c) in the case of a vehicle with more than six wheels 23 tons ; and
- (ii) the weight transmitted to the road surface by any two wheels in line transversely may equal but shall not exceed 8½ tons. [1959]

**64A.**—(1) Regulation 64 hereof shall not apply to public service vehicles.

(2) In the case of a heavy motor car or a motor car which is a public service vehicle the weight transmitted to the road surface by any two wheels in line transversely shall not exceed 8 tons, and the sum of the weights so transmitted by all the wheels shall not exceed, in the case of a vehicle with not more than four wheels, 12 tons, and, in the case of a vehicle with more than four wheels, 14 tons.

(3) For the purpose of this Regulation the weight transmitted to the road surface by a vehicle shall be taken to be the weight so transmitted by the vehicle when it is complete and fully equipped for service with a full supply of water, oil and fuel and loaded with weights of 140 lbs. per person placed in the correct relative positions for each passenger for whom a seat is provided and for the driver and conductor (if carried). [1960]

**65.** The total weight transmitted to the road surface by any two wheels of a trailer in line transversely shall not exceed 6½ tons.

Provided that in the case of a two-wheeled trailer forming part of an articulated vehicle the weight transmitted to the road surface by the wheels thereof may equal but shall not exceed 8 tons if all the wheels of the articulated vehicle are equipped with pneumatic tyres, and the total weight transmitted to the road surface by all the wheels of the articulated vehicle does not exceed 19 tons.

Provided also that in the case of a two-wheeled trailer, forming part of an articulated vehicle carrying gas equipment for the purpose of its propulsion, the weight transmitted to the road surface by the wheels of the trailer may equal but shall not exceed 8½ tons if all the wheels of the articulated vehicle are equipped with pneumatic tyres and the total weight transmitted to the road surface by all the wheels of the articulated vehicle does not exceed 20 tons.

Provided also that in the case of a four-wheeled trailer or a six-wheeled trailer, while being used for the carriage of round timber, the weight trans-

mitted to the road surface by any two wheels in line transversely may, if the vehicle is fitted with pneumatic tyres on all wheels, if it is not drawn at a speed exceeding 12 m.p.h. at any time when the weight so transmitted exceeds  $6\frac{1}{2}$  tons and if the total weight transmitted to the road surface by all wheels of the trailer does not exceed in the case of a four-wheeled trailer 13 tons, and in the case of a six-wheeled trailer  $19\frac{1}{2}$  tons, equal but shall not exceed 8 tons. [1961]

66. In the case of a heavy motor car, motor car or trailer whether laden or unladen the weight transmitted to any strip of the surface upon which the vehicle rests contained between any two parallel lines drawn 2 feet apart on that surface at right-angles to the longitudinal axis of the vehicle shall not exceed 10 tons. [1962]

66A. No person shall use or permit to be used any vehicle the overall width of which exceeds 7 feet 6 inches by virtue of the third proviso to Regulation 32 hereof or the proviso to Regulation 37 hereof on any road unless :—

- (a) the road is for the time being approved in writing by the Chairman of the Traffic Commissioners for any traffic area or his duly appointed deputy or, in the case of the Metropolitan traffic area, the Commissioner for that area or his duly appointed deputy as being a road suitable for use by such vehicles ; or
- (b) the vehicle is not being used as a public service vehicle and is proceeding on a journey
  - (i) in connection with the construction, testing, delivery, or repair of the vehicle,
  - (ii) for the purpose of making trial of the suitability of a road for the use of such vehicles,
  - (iii) to or from any point on a route operated by public service vehicles on a road approved as aforesaid, or
  - (iv) for any purpose approved either generally or specially by the Chairman of the Traffic Commissioners for any traffic area or his duly appointed deputy, or, in the case of the Metropolitan traffic area, the Commissioner for that area or his duly appointed deputy ; or
- (c) the use of the vehicle on the road is necessitated by reason of the temporary stoppage of a road approved as aforesaid. [1963]

67.—(1) Every motor vehicle, every trailer drawn thereby and all parts and accessories of such vehicle and trailer shall at all times be in such condition, and the number of passengers carried by, and the weight, distribution, packing and adjustment of the load, of such vehicle or trailer shall at all times be such that no danger is caused or is likely to be caused to any person on the vehicle or trailer or on a road.

Provided that in the case of a public service vehicle the provisions of this Regulation with regard to the number of passengers carried shall be deemed to be complied with if the number does not exceed that for the time being permitted by Regulations made by the Minister of Transport with regard to the equipment and use of public service vehicles.

(2) The load carried by any vehicle shall be so secured that danger is not likely to be caused to any person on a road by reason of the load or any part thereof falling from the vehicle.

(3) No motor vehicle or trailer shall be used for any purpose for which it is so unsuitable as to cause or be likely to cause danger to any person on the vehicle or trailer or on a road. [1964]

68. Every windscreen wiper required by these Regulations to be fitted to a motor vehicle and every part of every braking system and of the means

of operation thereof fitted to a motor vehicle or trailer, and all steering gear fitted to a motor vehicle shall at all times, while the motor vehicle or trailer is used on a road, be maintained in good and efficient working order and shall be properly adjusted. [1965]

69.—(1) No person shall use or cause or permit to be used on a road any vehicle propelled by an internal combustion engine so that the exhaust gases from the engine escape into the atmosphere without first passing through the silencer, expansion chamber or other contrivance required by these Regulations to be fitted,

(2) Every such silencer, expansion chamber or other contrivance shall at all times while the vehicle is used on a road be maintained in good and efficient working order, and shall not have been altered in such a way that the noise caused by the escape of the exhaust gases is made greater by the alteration. [1966]

70. Every instrument for indicating speed provided in compliance with the requirements of Regulation 11 hereof shall

- (a) at all material times be maintained in good working order, and
- (b) be kept free from any obstruction which might prevent its being easily read (or the appropriate indication given thereby being easily seen or heard),

Provided that it shall be a good defence to proceedings taken in respect of a contravention of paragraph (a) of this Regulation to prove that

- (i) the defect occurred in the course of the journey during which the contravention was detected, or
- (ii) at the time when the contravention was detected steps had already been taken to have the defect remedied with all reasonable expedition. [1967]

71. All the tyres of a motor vehicle or trailer shall at all times, while the vehicle or trailer is used on a road be maintained in such condition as to be free from any defect which might in any way cause damage to the surface of the road or danger to persons on or in the vehicle or to other persons using the road. [1968]

72. All glass or other transparent material fitted to motor vehicles shall be maintained in such condition that it does not obscure the vision of the driver while the vehicle is being driven on a road. [1969]

73. Every motor vehicle shall be maintained in such condition, and shall be so driven and used on a road, that there shall not be emitted therefrom any smoke, visible vapour, grit, sparks, ashes, cinders or oily substance, the emission of which could be prevented or avoided by the taking of any reasonable steps or the exercise of reasonable care, or the emission of which might cause damage to other persons or property or endanger the safety of any other users of the road in consequence of any harmful content therein. [1970]

74. No part of the contents of any closet, urinal, lavatory basin or sink carried by a motor vehicle or trailer, or of any tank into which such closet, urinal, lavatory basin or sink drains shall be discharged or allowed to leak on to a road. [1971]

75. No person shall use or cause or permit to be used on a road any motor vehicle or trailer which causes any excessive noise either directly or indirectly as a result of :—

- (a) any defect (including a defect in design or construction), lack of repair or faulty adjustment in the motor vehicle or trailer or any part or accessory of such motor vehicle or trailer, or
- (b) the faulty packing or adjustment of the load of such motor vehicle or trailer.

Provided that it shall be a good defence to proceedings taken under this Regulation :—

- (i) to prove that the noise or continuance of the noise in respect of which the proceedings are taken, was due to some temporary or accidental cause and could not have been prevented by the exercise of due diligence and care on the part of the owner or driver of the motor vehicle ; or
- (ii) in the case of proceedings against the driver or person in charge of the motor vehicle who is not the owner thereof, to prove that the noise arose through a defect in design or construction of the motor vehicle or trailer or through the negligence or fault of some other person, whose duty it was to keep the motor vehicle or trailer in proper condition or in a proper state of repair or adjustment or properly to pack or adjust the load of such motor vehicle or trailer as the case may be, and could not have been prevented by the exercise of reasonable diligence and care on the part of such driver or other person in charge of the motor vehicle. [1972]

76. No motor vehicle shall be used on a road in such manner as to cause any excessive noise which could have been avoided by the exercise of reasonable care on the part of the driver. [1973]

77. The driver of every motor vehicle shall, when the vehicle is stationary otherwise than through enforced stoppage owing to the necessities of traffic, stop the action of any machinery attached to, or forming part of, such vehicle, so far as may be necessary for the prevention of noise.

Provided that this Regulation shall not apply so as to prevent the examination or working of the machinery attached to, or forming part of, a motor vehicle where any such examination or working is rendered necessary by any failure or derangement of the said machinery or where the machinery attached to or forming part of the vehicle is required to be worked for some ancillary purpose.

Provided also that this Regulation shall not apply in the case of a motor vehicle which is propelled by gas produced in a plant carried on the vehicle or on a trailer drawn by the vehicle. [1974]

78. No person shall sound any instrument fitted to any motor vehicle for signalling its approach between the hours of 11.30 p.m. and 7 a.m. on any road on which there is provided a system of street lighting furnished by means of lamps placed not more than 200 yards apart or where a direction that the road shall be deemed to be a road in a built-up area is in force under the Road Traffic Act, 1934.

Provided that this Regulation shall not apply to any vehicle on an occasion when it is being used for fire brigade, salvage corps, ambulance or police purposes if the observance thereof would be likely to hinder the use of the vehicle for the purpose for which it is being used on that occasion. [1975]

79. When a motor vehicle is stationary on a road no person shall use or permit to be used any audible warning instrument with which it is fitted. [1976]

80. No person shall except in the case of a road roller or other road plant while actually engaged in the construction, maintenance or repair of roads, cause a motor vehicle to travel backwards for a greater distance or time than may be requisite for the safety or reasonable convenience of the occupants of that vehicle or of other traffic on the road. [1977]

81. No person in charge of a motor vehicle or trailer shall cause or permit the motor vehicle or trailer to stand on a road so as to cause any unnecessary obstruction thereof. [1978]

82.—(1) No person in charge of a motor vehicle or trailer drawn thereby shall cause or permit such trailer to stand when detached from the drawing

vehicle unless one at least of the wheels of the trailer is prevented from revolving by the setting of the brake or the use of a chain.

(2) No person while actually driving a motor vehicle shall be in such a position that he cannot have proper control over the vehicle or that he cannot retain a full view of the road and traffic ahead.

(3) No person in charge of a motor vehicle shall quit the vehicle without having stopped the engine and, where the vehicle is fitted with a brake capable of being set, having set the brake so as effectually to prevent two at least or in the case of a vehicle with only three wheels one of the wheels from revolving.

Provided that this paragraph shall not apply to prevent the working of the engine of a fire brigade vehicle for any fire fighting purpose.

Provided further that this paragraph shall not apply to the quitting of a motor vehicle without having stopped the engine in any case where the vehicle is propelled by gas produced in plant carried on the vehicle or on a trailer drawn by the vehicle. [1979]

83. The driver of every vehicle propelled by steam (other than a motor car) shall, unless two persons are carried upon it for the purpose of driving or attending to the vehicle, stop the vehicle whenever it is necessary to attend to the furnace. [1980]

84. Where a trailer is drawn by a motor vehicle whether wheeled or track laying the driver (or in the case of a locomotive one of the persons employed in driving or tending the locomotive) shall be in a position readily to operate any brakes required by these Regulations to be fitted to the trailer as well as the brakes of the motor vehicle, unless a person other than the driver is in a position and competent efficiently to apply the brakes of the trailer.

Provided that this Regulation shall not apply in the case of trailers which, in compliance with these Regulations, are fitted with brakes which automatically come into operation on the overrun of the trailer. [1981]

85. The requirements of Section 17 of the Road Traffic Act, 1930, with regard to the employment of drivers and attendants shall not apply in the following cases, that is to say :—

- (i) in the case of any articulated vehicle ;
- (ii) where a land locomotive or a land tractor is drawing a land implement ;
- (iii) where a trailer with not more than two wheels is drawn by a motor car or a motor cycle ;
- (iv) where a motor tractor is drawing—
  - (a) any closed trailer specially constructed and used for the conveyance of meat between docks and railway stations or between wholesale markets and docks or railway stations ;
  - (b) any machine or implement used for the purpose of the maintenance, repair or cleansing of roads ; or
  - (c) any trailer designed for use and used by or on behalf of a local authority solely in connection with street cleansing, the collection or disposal of refuse, or the collection or disposal of the contents of gullies or cesspools ;
- (v) where a motor vehicle and any trailer drawn thereby, not exceeding 30 cwts. in weight unladen in each case, are designed for use in works or on private premises and are used on a road only in passing from one part of the works or premises to another or to works or premises in the immediate neighbourhood ;
- (vi) where a gas trailer is drawn by a heavy motor car or a motor car ;
- (vii) where a motor vehicle is drawing a trailer not exceeding 1 ton in weight unladen, or a trailer not constructed to carry and not carrying a load other than plant or other special appliance or apparatus which is a permanent or essentially permanent fixture.



and not exceeding 2 tons in total weight, if in either case the brakes of the trailer automatically come into operation on the overrun of the trailer ;

(viii) in the case of any road roller ;

(ix) where a motor vehicle belonging to the Admiralty, the War Department or the Air Ministry and being used for naval, military or air force purposes is drawing a trailer fitted with brakes which can be applied by the driver of the drawing vehicle. [1982]

86. No motor vehicle shall tow any other vehicle unless the tow rope or chain be so adjusted that the distance separating the nearest points of the two vehicles shall not exceed 15 feet, and steps shall be taken to render the tow rope or chain easily distinguishable by other users of the road. [1983]

87.—(1) The total overall length of a heavy motor car or a motor car and a trailer drawn thereby shall not exceed 60 feet.

(2) The definition of "overall length" in Regulation 3 hereof shall apply for the purpose of this Regulation, except that the parallel planes therein specified shall pass respectively through the extreme projecting point at the front of the drawing vehicle and the extreme projecting point at the rear of the trailer when the connection between the two vehicles is fully extended and the longitudinal axes of the two vehicles are in the same straight line. [1984]

88. Every side-car fitted to a motor cycle shall be so attached that the wheel thereof is not wholly outside perpendicular planes at right angles to the longitudinal axis of the motor cycle passing through the extreme projecting points in the front and in the rear of the motor cycle. [1985]

89. As from 1st January, 1947, a motor cycle with not more than two wheels and without a side-car shall not draw a trailer.

Provided that this Regulation shall not apply to prevent the towing of a broken down motor cycle which is being drawn by another motor cycle in consequence of the breakdown. [1986]

90. No motor cycle shall draw a trailer exceeding 5 cwts. in weight unladen or 5 feet in overall width. [1987]

91. No invalid chair shall draw a trailer. [1988]

92. No trailer shall be used for the conveyance of passengers for hire or reward. [1989]

93. No mascot shall be carried by a motor vehicle registered on or after 1st October, 1937, in any position where it is likely to strike any person with whom the vehicle may collide unless the mascot is not liable to cause injury to such person by reason of any projection thereon. [1990]

94. If any person uses or causes or permits to be used on any road a motor vehicle or trailer in contravention of or fails to comply with any Regulations contained in Part III of these Regulations he shall for each offence be liable to a fine not exceeding twenty pounds. [1991]

#### PART IV

##### *Testing and inspection of brakes, silencers and steering gear*

95.—(1) Any police constable in uniform, and any person for the time being appointed by the Minister of Transport as a Certifying Officer or Public Service Vehicle Examiner under the Road Traffic Act, 1930, or as an Examiner under the Road and Rail Traffic Act, 1933, who shall produce his authority if required, is hereby empowered to test and inspect either on a road or, subject to the consent of the owner of the premises, on any premises where the vehicle is, any brakes, silencers or steering gear fitted to a motor vehicle or trailer.

(2) (i) The power conferred by this Regulation to test and inspect the brakes, silencers or steering gear of a vehicle on the premises where the vehicle is shall not be exercised unless either the owner of the vehicle consents



or notice of the date and time at which it is proposed to carry out the test and inspection has been given to him in accordance with the provisions of the next succeeding sub-paragraph ;

(ii) The said notice shall be given to the owner of the vehicle personally or left at his address not less than 48 hours before the time of the proposed test and inspection or shall be sent not less than 72 hours before that time by registered post to him at his address ;

(iii) For the purposes of this Regulation, the owner of the vehicle shall be deemed to be—

(a) in the case of a vehicle registered under the Roads Act, 1920, the person appearing as the owner of the vehicle in the register kept by the appropriate Council under section 6 of the Act ;

(b) in the case of a vehicle used under a general licence, the holder of the licence ; and

(c) in the case of a vehicle which is used under an international circulation permit, the person to whom the permit was issued ;

and in cases (a) and (b) the address of the owner as shown on the register of the Council registering the vehicle or on the licence as the case may be may be treated as his address.

(3) The provisions of paragraph (2) of this Regulation shall not apply in the case of a test and inspection made within 48 hours of an accident to which section 22 of the Road Traffic Act, 1930, applies and in which the vehicle has been involved. [1992]

## PART V

### *Interpretation*

96. The Interpretation Act, 1889, applies for the purpose of the interpretation of these Regulations as it applies for the purpose of the interpretation of an Act of Parliament. [1993]

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## FIRST SCHEDULE

Regulations referred to in Regulation 2 of these Regulations :

The Motor Vehicles (Construction and Use) Regulations, 1941 (S. R. & O., 1941 (No. 398), I, p. 998.

The Motor Vehicles (Construction and Use) (Amendment) Provisional Regulations, 1941.

The Motor Vehicles (Construction and Use) (Amendment) (No. 2) Provisional Regulations, 1941.

The Motor Vehicles (Construction and Use) (Amendment) (No. 3) Provisional Regulations, 1941.

The Motor Vehicles (Construction and Use) (Amendment) Provisional Regulations, 1942.

The Motor Vehicles (Construction and Use) (Amendment) (No. 2) Provisional Regulations, 1942.

The Motor Vehicles (Construction and Use) (Amendment) (No. 3) Provisional Regulations, 1942.

The Motor Vehicles (Construction and Use) (Amendment) (No. 4) Provisional Regulations, 1942.

The Motor Vehicles (Construction and Use) (Amendment) (No. 5) Provisional Regulations, 1942.

The Motor Vehicles (Construction and Use) (Amendment) (No. 6) Provisional Regulations, 1942.

The Motor Vehicles (Construction and Use) (Amendment) (No. 7) Provisional Regulations, 1942.

The Motor Vehicles (Construction and Use) (Amendment) Provisional Regulations, 1943.

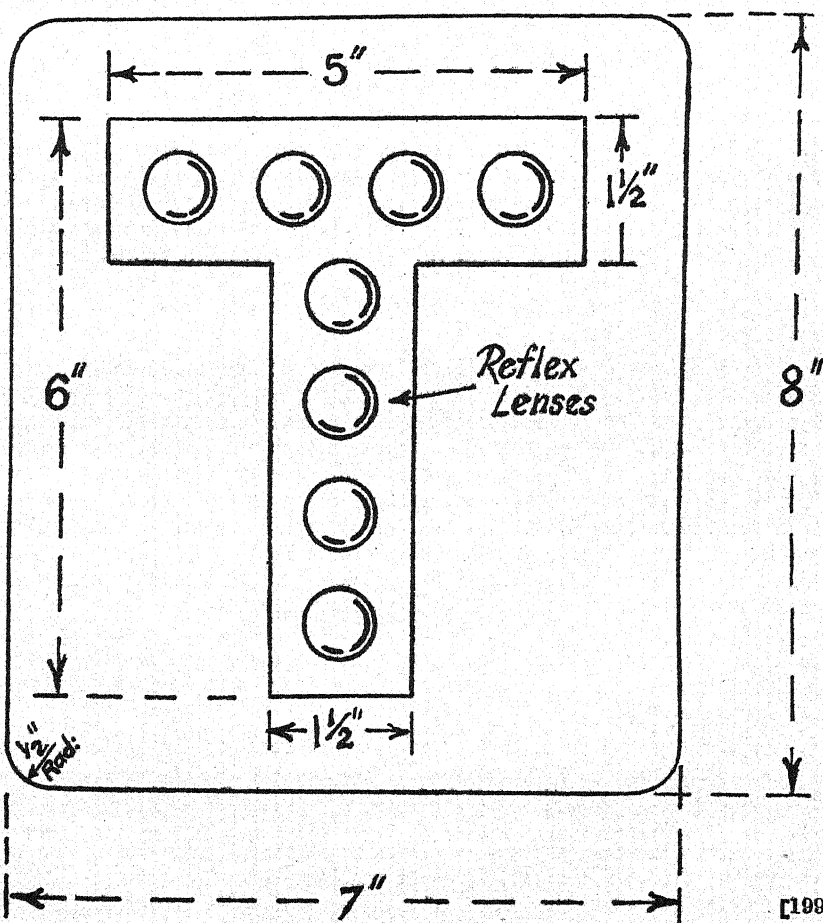
The Motor Vehicles (Construction and Use) (Amendment) (No. 2) Regulations, 1943 (S. R. & O., 1943 (No. 1279), I, p. 881).

- The Motor Vehicles (Construction and Use) (Amendment) (No. 3) Provisional Regulations, 1943.  
 The Motor Vehicles (Construction and Use) (Amendment) (No. 4) Provisional Regulations, 1943.  
 The Motor Vehicles (Construction and Use) (Amendment) (No. 5) Provisional Regulations, 1943.  
 The Motor Vehicles (Construction and Use) (Amendment) Provisional Regulations, 1944.  
 The Motor Vehicles (Construction and Use) (Amendment) Provisional Regulations, 1945.  
 The Motor Vehicles (Construction and Use) (Amendment) Regulations, 1946 (S. R. & O., 1946, No. 402).  
 The Motor Vehicles (Construction and Use) (Amendment) (No. 2) Regulations, 1946 (S. R. & O., 1946, No. 403).  
 The Motor Vehicles (Construction and Use) (Amendment) (No. 3) Regulations, 1946 (S. R. & O., 1946, No. 939).  
 The Motor Vehicles (Construction and Use) (Amendment) (No. 4) Regulations, 1946 (S. R. & O., 1946, No. 2017).  
 The Motor Vehicles (Construction and Use) (Amendment) (No. 5) Regulations, 1946 (S. R. & O., 1946, No. 2130). [1994]

### SECOND SCHEDULE

Diagram referred to in Regulation 60 of these Regulations.

*White letter on Black Ground.*



## EXPLANATORY NOTE

*(This Note is not part of the Regulations, but is intended to indicate their general purport.)*

*These Regulations consolidate, without amendment, the Regulations specified in the First Schedule. The numbering of Regulations 64A and 66A is retained for convenience of reference in those cases in which the numbering is contained in other statutory instruments and to avoid the inconvenience likely to be caused to the Motor Industry by a renumbering of all Regulations subsequent to 64.*

## MOTOR VEHICLES (DRIVING LICENCES) REGULATIONS, 1947

S. R. & O., 1947, No. 925

May 13, 1947

The Minister of Transport (hereinafter referred to as "the Minister") in exercise of the powers conferred upon him by section 30 of the Road Traffic Act, 1930 (hereinafter referred to as "the Act of 1930") and section 6 of the Road Traffic Act, 1934 (hereinafter referred to as "the Act of 1934") and of all other powers enabling him in that behalf, hereby makes the following Regulations :—

1. These Regulations shall come into force on the second day of June, 1947, and may be cited as "The Motor Vehicles (Driving Licences) Regulations, 1947". [1996]

2. The Regulations specified in the Eighth Schedule to these Regulations are hereby revoked, without prejudice, however, to the validity of anything done thereunder or to any liability incurred in respect of any act or omission before the date of the coming into force of these Regulations and any application made, licence granted or certificate or other document issued before the said date shall, if in force immediately before that date, continue in force and have effect as if made, granted or issued under the corresponding provision of these Regulations. [1997]

3. For the purpose of these Regulations, except where the context otherwise requires, the term "licence" means a licence to drive a motor vehicle and includes a provisional licence, the term "test" means a test to which a person may claim to be subjected under subsection (2) or subsection (4) of section 5 of the Act of 1930, or a test under section 6 of the Act of 1934, the term "agricultural tractor" means a motor tractor as defined in section 2 of the Road Traffic Act, 1930, and used solely in connection with agriculture, the excise duty in respect of which under section 13 of the Finance Act, 1920, is chargeable at the rate applicable to vehicles specified in sub-paragraph (a) of paragraph 4 of the Second Schedule to that Act, and the term "County Borough" shall in relation to Scotland include a Burgh containing within its boundaries as ascertained, fixed or determined for police purposes a population according to the census for the time being last taken of or exceeding 50,000. [1998]

4.—(1) Any person who desires to obtain the grant of a licence shall apply to the Council of the County or County Borough in which he resides or, if he has no residence in Great Britain, to any such Council (hereinafter in either case referred to as "the Licensing Authority") and shall furnish all relevant particulars and make any relevant declaration specified in the form set out in the First Schedule to these Regulations.

(2) Applications for the grant of a licence may be received and dealt

with at any time within two months before the date on which the grant of the licence is to take effect.

(3) The fee of five shillings prescribed by the Act of 1930 shall be paid before the applicant is entitled to receive a licence. [1999]

5. The diseases and disabilities in the case of which the applicant for a licence shall not be entitled to claim to be subjected to a test as to his fitness or ability to drive a motor vehicle under subsection (2) of section 5 of the Act of 1930 shall be the following :—

Epilepsy ; any form of mental disorder or mental defect as a result of which either the applicant is certified or duly ascertained as subject to be placed under statutory supervision, or the applicant's estate is in the hands of a receiver, curator bonis or judicial factor ; liability to sudden attacks of disabling giddiness or fainting ; inability to read at a distance of 25 yards in good daylight (with the aid of glasses, if worn) a series of six letters and figures in white on a black ground of the same size and arrangement as those prescribed for the identification mark of a motor car. [2000]

6. An applicant for a Driving Licence shall be deemed for the purposes of the Acts of 1930 and 1934, and of these Regulations, to be competent to drive a motor vehicle of any class or description comprised in any one of the Groups specified in the first column of the Second Schedule to these Regulations, if he is tested on a vehicle of any class or description comprised in that Group, and satisfies the person conducting the test—

- (a) that he is fully conversant with the contents of the Highway Code ;
- (b) generally, that he is competent to drive, without danger to and with due consideration for other users of the road, a vehicle of the same class or description as that on which he is tested ; and
- (c) that he is able to comply with such of the additional requirements specified in the Third Schedule to these Regulations as are enumerated in the second column of the said Second Schedule, opposite to that Group :

Provided that in the case of a disabled driver if the test proves his ability to drive vehicles of a particular construction or design only, he shall not be deemed to have failed to pass the test by reason only of the fact that he was not tested on a vehicle of that construction or design. [2001]

7. Tests may be conducted—

- (1) by Examiners appointed by the Minister ;
- (2) by the Board of Admiralty, the Army Council, the Air Council and the Postmaster-General in so far as concerns the testing of persons in the service of the Crown under their respective Departments ;
- (3) by one of His Majesty's Principal Secretaries of State in so far as concerns the testing of members of the National Fire Service ;
- (4) by any Chief Officer of Police in so far as concerns the testing—
  - (a) of members of a police force, or
  - (b) of persons employed in the driving of vehicles for police purposes by a police authority or by the Receiver for the Metropolitan Police District ;
- (5) by the Commissioner of Police for the Metropolis in so far as concerns the testing of any person who is the holder of or is an applicant for a licence to drive a motor cab by virtue of the Metropolitan Public Carriage Act, 1869, and of any person residing in the Metropolitan Traffic Area who is the holder of, or an applicant for, a licence to drive a public service vehicle ;

- (6) by the Royal Automobile Club, the Automobile Association and the Royal Scottish Automobile Club in so far as concerns persons resident abroad who intend to make only a temporary stay in Great Britain ; and
- (7) for the purposes of section 6 of the Act of 1934, by any person appointed for the purpose by the Minister under the provisions of Regulation 8 hereof. [2002]

8.—(1) Any person may apply to the Minister to be appointed to conduct tests for the purposes of section 6 of the Act of 1934, of persons employed or proposed to be employed by him as drivers and the Minister may if he is satisfied—

- (a) that the number of drivers of mechanically-propelled vehicles ordinarily employed by the applicant exceeds 250 ;
- (b) that proper arrangements will be made by the applicant for the conduct of tests in accordance with these Regulations ; and
- (c) that proper records of tests and the results thereof will be kept by the applicant ;

grant the application subject to any special conditions which he may think fit to impose.

(2) The Minister may at any time revoke an appointment made by him under this Regulation and the authority to conduct tests shall thereupon cease. [2003]

9. Any person authorised under the provisions of paragraphs (2), (3), (4), (5), (6) or (7) of Regulation 7 hereof to conduct tests may, subject to the approval of the Minister, authorise suitable persons to act as Examiners of those who submit themselves for test. [2004]

10. Any person desiring to subject himself for a test may apply to the Clerk to the Traffic Commissioners for the Area in which he resides who will arrange a time and place for the examination by an authorised examiner. [2005]

11.—(1) Any person passing the test shall be furnished with a certificate in the form set out in Part I of the Fourth Schedule to these Regulations, and any person failing to pass the said test shall be furnished with a statement in the form set out in Part II of the said Schedule.

(2) If a certificate or statement so furnished is lost or destroyed the person to whom it was furnished may obtain a duplicate copy from the Supervising Examiner for the Area in which he resides or from the person authorised to conduct the test by whom the certificate or statement was issued as the case may be on payment of a fee of one shilling.

(3) An applicant for a licence who is required to satisfy the licensing authority that he has passed the test shall on the issue to him of a licence deliver the certificate for retention by the licensing authority. The licensing authority shall, if so required by the applicant, issue to him a copy of the certificate on payment of a fee of one shilling. [2006]

12. The period during which a person who has submitted himself for a test and failed to pass that test shall be ineligible to submit himself to another test with a vehicle of the same Group shall be one month. [2007]

13. A person subjected to a test shall provide at his own expense a motor vehicle in proper condition. [2008]

14. The fee to be paid in respect of a test conducted under the provisions of paragraph (1), paragraph (5) or paragraph (6) of Regulation 7 hereof shall be 2s. 6d. if the test relates only to vehicles in Group V or Group VI of the Second Schedule to these Regulations and 7s. 6d. in any other case and shall be paid in the case of a test conducted under paragraph (1) of Regulation 7

hereof to the Clerk to the Traffic Commissioners for the Traffic Area concerned and in the case of a test conducted under paragraph (5) or paragraph (6) of that Regulation to the person conducting the test and retained by that person as remuneration. No fee shall be payable in respect of a test conducted under the provisions of paragraphs (2), (3), (4) or (7) of Regulation 7 hereof. [2009]

15. An applicant for a licence shall not be required to pass a test for the purpose of section 6 of the Act of 1934 if he satisfies the Licensing Authority that he is a person not resident in Great Britain and is the holder of a valid International Driving Permit issued under the International Convention relative to Motor Traffic of 1926, or is licensed or otherwise authorised to drive a motor vehicle of the class for which he desires a licence by the competent authority of a country other than Great Britain. [2010]

16.—(1) Every licence issued after the date hereof shall be in the form of a book containing—

- (a) particulars in the form specified in the Fifth or Sixth Schedule to these Regulations as the case may require :
- (b) not less than 4 pages reserved for endorsements :

Provided that where the applicant for a licence is already the holder of such a book the Licensing Authority shall, in the case of an applicant for a provisional licence who is already the holder of a licence other than a provisional licence, and in any other case may, instead of issuing a new book, affix in the book so held a page containing the particulars specified in the said Fifth or Sixth Schedule.

(2) Where a licence is limited to the driving of vehicles of a particular construction or design, particulars of the limitation shall be entered on the licence.

(3) A provisional licence shall be granted only subject to the condition that until the holder thereof has passed the appropriate test—

- (a) he shall, except in the case of a vehicle which is not constructed or adapted to carry more than one person, use it only when under the supervision of the holder of a licence other than a provisional licence who has been the holder of a licence for at least two years or has passed a test under section 6 of the Act of 1934, who shall be present in the vehicle with him ; provided that for the purpose of this sub-paragraph a motor bicycle shall not be deemed to be constructed or adapted to carry more than one person unless it has a sidecar constructed for the carriage of a passenger attached ;
- (b) he shall not, in the case of a motor bicycle to which a sidecar is not attached, carry a passenger other than the holder of a licence other than a provisional licence who has been the holder of a licence for at least two years or has passed a test under section 6 of the Act of 1934 ;
- (c) the vehicle while being driven by him shall clearly display in a conspicuous position on the front and on the back of the vehicle a distinguishing mark in the form set out in the Seventh Schedule to these Regulations. [2011]

17. Every person to whom a licence is granted shall forthwith sign it in ink with his usual signature, and if he fails to do so, or if on production of the licence to any person entitled to demand production thereof such licence does not bear his usual signature in ink, he shall be guilty of an offence and liable to a fine not exceeding £5. [2012]

18.—(1) If the holder of a licence satisfies the Licensing Authority by whom it was granted that such licence has been lost or defaced, the Licensing

Authority shall, on payment of a fee of one shilling, issue to him a duplicate licence, and shall endorse thereon any particulars endorsed upon the original licence, and the duplicate so issued shall have the same effect as the original.

(2) If at any time after the issue of a duplicate licence and during the currency of such duplicate licence, the original licence shall be found, the person to whom the original licence was issued shall, if it is not in his possession, take all reasonable steps to obtain possession of it and shall return it as soon as may be to the Licensing Authority by whom it was issued. [2013]

19. Every Licensing Authority shall establish and keep in such form as the Minister may direct, a record of all licences issued by them and a record of all endorsements from time to time duly made on such licences. [2014]

20. Every Licensing Authority shall, upon application being made to them by any other Licensing Authority, by any Officer of Police not below the rank of inspector, or by any constable authorised by such officer, forthwith provide, without fee, a copy of the particulars recorded by them relating to any licence granted by them. [2015]

21. The Interpretation Act, 1889, shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament. [2016]

\* \* \* \* \*

### FIRST SCHEDULE

#### ROAD TRAFFIC ACTS, 1930 TO 1947

##### *Application for licence to drive a Motor Vehicle*

1. From what date do you want the licence to run ? .....
2. What is your surname ? .....
3. What are your full Christian names ? .....
4. What is your permanent address in Great Britain .....
5. What kind of licence do you want ? .....
6. Give particulars of your last licence, or, if your last two licences were provisional licences valid for twelve months, of those licences.
 

Class or group of vehicles .....	.....
Town or County Council.....	.....
Date of expiry.....	.....
..... No.....	.....
7. What is your age ? ..... yrs. .... months.
8. Has any Court in the last three years ordered a conviction to be endorsed on your licence ?
 

Date .....	.....
Court .....	.....
Offence .....	.....
9. Are you disqualified by any Court for holding or obtaining a licence ? .....
10. Have you ever been refused a licence or had one revoked by any Council ? .....
11. If you have held no licence other than a provisional licence valid for twelve months, have you during the currency of any such licence been convicted of manslaughter, or culpable homicide, in connection with the driving of a motor vehicle ; of causing any bodily harm to any person in connection with the driving of a motor vehicle ; of an offence under section eleven of the Road Traffic Act, 1930 (which



relates to reckless or dangerous driving); of an offence under section twelve of that Act (which relates to careless driving); or of an offence under section fifteen of that Act (which relates to driving when under the influence of drink or drugs)?

12. What Council holds your certificate of competence to drive?
13. Do you suffer from epilepsy, or from sudden attacks of disabling giddiness or fainting?
14. Can you read at a distance of 25 yards in good daylight (with glasses if worn) a motor-car number plate containing six letters and figures?
15. Are you without either hand or foot, or are you suffering from any defect in movement, control or muscular power of either arm or leg?
16. Are you suffering from any other disease, mental or physical, or disability which would be likely to cause the driving by you of a motor vehicle to be a source of danger to the public?
17. Have you studied the "Highway Code"?
18. Do you understand that (subject to statutory exceptions) it is an offence for any person to use a motor vehicle on a road unless covered by an insurance against third party risks?

I declare that to the best of my knowledge and belief the answers given above are true.

Usual signature of applicant.....

#### Disabled Driver's Declaration

I declare that since I applied for the licence mentioned in Answer 6, the disease or physical disability from which I am suffering has not become more acute and that I am not suffering from any disease or disability not disclosed on such last application.

Date .....

Signature of Applicant .....

#### Claim of Disabled Driver to be subjected to a Driving Test

I claim to be subjected to a test as to my fitness or ability to drive a motor vehicle of the class or classes specified in this application.

Signature of Applicant.....

[2017]

#### SECOND SCHEDULE

##### Groups

##### Requirement to be fulfilled

- I. Heavy locomotive, light locomotive, motor tractor, heavy motor car, motor car, or motor tricycle equipped with means for reversing, but excluding any vehicle comprised in Group IV or Group VI. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10

<i>Groups</i>	<i>Requirement to be fulfilled</i>
II. Trolley vehicle.	1, 2, 3, 4, 5, 6, 9, 10, 11.
III. Motor bicycle (with or without side-car) or tricycle not equipped with means for reversing, but excluding any vehicle comprised in Group VI.	1, 2, 3, 4, 5, 6, 9, 10.
IV. Track laying vehicle steered by its tracks.	1, 2, 3, 4, 5, 6, 9, 10, 12.
V. Invalid carriage.	1, 2, 3, 4, 5, 6, 10.
VI. Mowing machine, agricultural tractor, or vehicle controlled by pedestrian.	1, 2, 6

[2018]

### THIRD SCHEDULE

The additional requirements as to certain of which a candidate for a Driving Test shall satisfy the person conducting the test, shall be that he is able to—

1. Read at a distance of 25 yards in good daylight (with the aid of glasses if worn) a motor car number plate containing six letters and figures ;
2. Start the engine of the vehicle ;
3. Move away straight ahead or at an angle ;
4. Overtake, meet or cross the path of other vehicles and take an appropriate course ;
5. Turn right and left-hand corners correctly ;
6. Stop the vehicle in an emergency and normally, and in the latter case bring it to rest at an appropriate part of the road ;
7. Drive the vehicle backwards and whilst so doing enter a limited opening either to the right or to the left ;
8. Cause the vehicle to face in the opposite direction by the use of forward and reverse gears ;
9. Give, by hand and by mechanical means (if fitted to the vehicle) or, in the case of a disabled driver for whom it is impracticable or undesirable to give signals by hand, by mechanical means, in a clear and unmistakable manner appropriate signals at appropriate times to indicate his intended actions ;
10. Act correctly and promptly on all signals given by traffic signs and traffic controllers and take appropriate action on signs given by other road users ;
11. Turn right and left-hand corners without de-wiring ;
12. Drive the vehicle backwards and cause it to face in the opposite direction by means of its tracks. [2019]

### FOURTH SCHEDULE

#### PART I

#### ROAD TRAFFIC ACTS, 1930 TO 1947

#### FORM OF CERTIFICATE OF PASSING OF TEST OF COMPETENCE TO DRIVE

.....  
has been examined and has passed the test of competence to drive.....  
..... prescribed for the purposes of section 5 of the Road Traffic Act, 1930, or section 6 of the Road Traffic Act, 1934. [2020]

#### PART II

#### ROAD TRAFFIC ACTS, 1930 TO 1947

#### FORM OF STATEMENT OF FAILURE TO PASS TEST OF COMPETENCE TO DRIVE

.....  
has this day been examined and has failed to pass the test of competence to drive prescribed for the purposes of section 5 of the Road Traffic Act, 1930, or section 6 of the Road Traffic Act, 1934. [2021]

## FIFTH SCHEDULE

PARTICULARS TO BE CONTAINED IN LICENCE (OTHER THAN A PROVISIONAL LICENCE)

..... No.....  
 ..... County (Borough) (Town) Council

ROAD TRAFFIC ACTS, 1930 TO 1947—DRIVING LICENCE

.....  
 ..... of .....

is hereby licensed to drive .....  
 from ..... 19... until ..... 19...  
 inclusive.

(Address of Authority) .....

Usual signature of licensee .....

[2022]

## SIXTH SCHEDULE

FORM OF PROVISIONAL LICENCE

..... No.....  
 ..... County (Borough) (Town) Council

ROAD TRAFFIC ACTS, 1930 TO 1947—PROVISIONAL DRIVING LICENCE

.....  
 ..... of .....

is hereby licensed to drive .....  
 from ..... 19... until ..... 19...  
 inclusive, subject to the conditions prescribed in paragraph (3) of Regulation 16 of  
 the Motor Vehicles (Driving Licences) Regulations, 1947.

(Address of Authority) .....

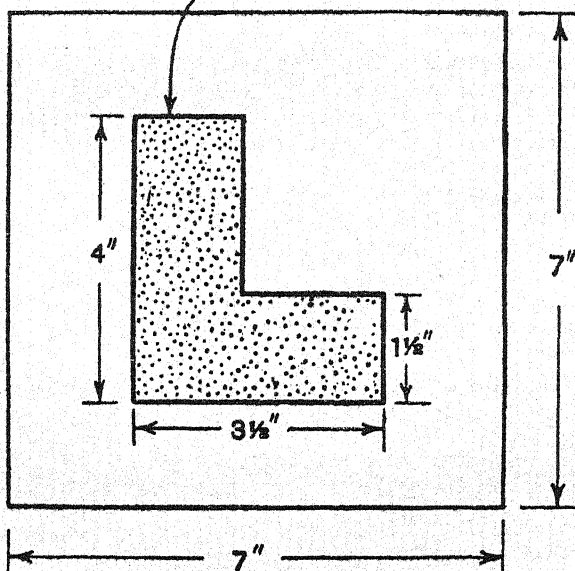
Usual signature of licensee .....

[2023]

## SEVENTH SCHEDULE

Diagram of distinguishing mark to be displayed on a motor vehicle whilst being  
 driven by a person holding a provisional licence.

## Red Letter on White Ground



The corners of the white ground may be rounded off.

[2024]

## EIGHTH SCHEDULE

## REGULATIONS REFERRED TO IN REGULATION 2 OF THESE REGULATIONS

The Motor Vehicles (Driving Licences) Regulations, 1937 (S. R. & O., 1937 (No. 438), p. 2094 ;  
 The Motor Vehicles (Driving Licences) (Amendment) Provisional Regulations, 1940 ;  
 The Motor Vehicles (Driving Licences) (Amendment) Provisional Regulations, 1942 ;  
 The Motor Vehicles (Driving Licences) (Amendment) Provisional Regulations, 1946, and  
 The Motor Vehicles (Driving Licences) (Amendment) Provisional Regulations, 1947. [2025]

## EXPLANATORY NOTE

*(This Note is not part of the Regulations, but is intended to indicate their general purport.)*

*These Regulations consolidate without amendment the Regulations specified in the Eighth Schedule.*

### MOTOR VEHICLES (AUTHORISATION OF SPECIAL TYPES) (AMENDMENT) ORDER, 1947

S. R. & O., 1947, No. 1290

June 24, 1947

Whereas by section 3 of the Road Traffic Act, 1930, the Minister of Transport (hereinafter referred to as "the Minister") may by Order authorise, subject to such restrictions and conditions as may be specified in the Order, the use on roads of special motor vehicles or trailers or special types of motor vehicles or trailers which are constructed either for special purposes or for tests or trials ;

And whereas by virtue of divers Orders so made the use on roads of certain motor vehicles and trailers has been authorised subject to certain restrictions and conditions notwithstanding that the motor vehicles or trailers do not in all or certain respects comply with the requirements of (inter alia) the Motor Vehicles (Construction and Use) Regulations, 1941 (hereinafter referred to as "the 1941 Regulations") ;

And whereas it is provided by the said section 3 that the Minister may at any time revoke, vary or amend an order made thereunder ;

And whereas the 1941 Regulations have been revoked and superseded by the Motor Vehicles (Construction and Use) Regulations, 1947 (hereinafter referred to as "the 1947 Regulations") and it is expedient that the use on roads of the said motor vehicles and trailers should likewise be authorised, subject to the like restrictions and conditions, notwithstanding that the motor vehicles or trailers do not in all respects comply with the requirements of the 1947 Regulations ;

Now, therefore, the Minister in exercise of the powers conferred upon him as aforesaid and of all other powers enabling him in that behalf hereby makes the following Order :—

1. This Order shall come into force forthwith and may be cited as "The Motor Vehicles (Authorisation of Special Types) (Amendment) Order, 1947." [2026]

2. Every order made in pursuance of the powers conferred by section 3 of the Road Traffic Act, 1930, and in force immediately before the coming into force of the 1947 Regulations shall have effect as though for references therein to the 1941 Regulations there were substituted references to the 1947 Regulations and as though for references to any particular provision of the

1941 Regulations there were substituted references to the corresponding provision of the 1947 Regulations. [2027]

3. The Interpretation Act, 1889, shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament. [2028]

\* \* \* \* \*

## MOTOR VEHICLES (AUTHORISATION OF SPECIAL TYPES) (REVOCATION) ORDER, 1947

*S. R. & O., 1947, No. 1313*

*June 25, 1947*

Whereas by section 3 of the Road Traffic Act, 1930, the Minister of Transport (hereinafter referred to as "the Minister") may by Order authorise, subject to such restrictions and conditions as may be specified in the Order, the use on roads of special motor vehicles or trailers or special types of motor vehicles or trailers which are constructed either for special purposes or for tests or trials;

And whereas the Minister of War Transport in exercise of the said powers, which were for the time being vested in him, made the Motor Vehicles (Authorisation of Special Types) General Order, 1941 (hereinafter referred to as "the Principal Order") with regard to certain special motor vehicles and trailers;

And whereas the Principal Order was amended by the Motor Vehicles Authorisation of Special Types (Amendment) Order, 1943 (hereinafter referred to as "the amending Order"), so as to extend to dumpers actually engaged in engineering operations when used on roads at the site of such operations;

And whereas it is provided by the said section 3 that the Minister may at any time revoke, vary or amend an order made thereunder;

And whereas it is expedient that the Principal Order should cease to have effect with respect to the use on roads of dumpers;

Now, therefore, the Minister in exercise of the powers conferred upon him as aforesaid and of all other powers enabling him in that behalf, hereby makes the following Order :—

1. This Order shall come into force on the 1st day of January, 1948, and may be cited as "The Motor Vehicles (Authorisation of Special Types) (Revocation) Order, 1947." [2029]

2. The amending Order is hereby revoked and the Principal Order shall henceforth have effect as though the amending Order had not been made, without prejudice however to the validity of anything done thereunder or to any liability incurred in respect of any act or omission before the date of the coming into force of this Order. [2030]

3. The Interpretation Act, 1889, shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament. [2031]

\* \* \* \* \*

## MOTOR VEHICLES (AUTHORISATION OF SPECIAL TYPES) (AMENDMENT) (NO. 2) ORDER, 1947

*S. R. & O., 1947, No. 1314*

*June 25, 1947*

Whereas by section 3 of the Road Traffic Act, 1930, the Minister of Transport (hereinafter referred to as "the Minister") may by Order authorise,

subject to such restrictions and conditions as may be specified in the Order, the use on roads of special motor vehicles or trailers or special types of motor vehicles or trailers which are constructed either for special purposes or for tests or trials ;

And whereas in pursuance of the said powers, the Motor Vehicles (Authorisation of Special Types) Order, 1944, and the Motor Vehicles (Authorisation of Special Types) (Amendment) Order, 1947 (which authorise the use on roads of land tractors constructed for the combined purpose of reaping and threshing notwithstanding that they do not comply in all respects with the requirements of the Motor Vehicles (Construction and Use) Regulations, 1947, provided, inter alia, that the overall width of any such vehicle does not exceed 10 ft., that it does not travel at a speed exceeding 10 miles per hour and that two clear days' notice in advance is given to the police), were made ;

And whereas it is provided by the said section 3 that the Minister may at any time revoke, vary or amend an order made thereunder ;

And whereas it is expedient that the operation of the said Orders should, until the 30th day of November, 1947, be modified so as to include any land tractor constructed for the purpose aforesaid the overall width of which exceeds 10 ft. but does not exceed 14 ft. subject to compliance with the like conditions except that any such vehicles shall not travel at a speed exceeding 5 miles per hour, and so as to reduce from two clear days to 24 hours the notice to be given in advance to the police ;

Now, therefore, the Minister in exercise of the powers so conferred upon him and of all other powers enabling him in that behalf, hereby makes the following Order :—

1. This Order shall come into force on the 1st day of July, 1947, and may be cited as "The Motor Vehicles (Authorisation of Special Types) (Amendment) (No. 2) Order, 1947." [2032]

2. The Motor Vehicles (Authorisation of Special Types) Order, 1944, and the Motor Vehicles (Authorisation of Special Types) (Amendment) Order, 1947, shall have effect as though in Article 3 of the first mentioned Order the following paragraphs were substituted for paragraphs (c), (e) and (f) respectively :—

"(c) the overall width of such vehicles shall not exceed 14 ft."

"(e) before any such vehicle, the overall width of which exceeds 8 ft., is required to travel on roads for any distance exceeding 5 miles, 24 hours notice of the intended journey shall be given to the Chief Officer of Police of every district through which it is intended that the vehicle shall pass, provided that with the concurrence of each such Chief Officer concerned less than 24 hours' notice may be given."

"(f) no such vehicle the overall width of which exceeds 10 ft. shall travel at a speed exceeding 5 miles per hour, and no other such vehicle shall travel at a speed exceeding 10 miles per hour." [2033]

3. This Order shall cease to have effect on the 30th November, 1947, without prejudice however to the validity of anything previously done thereunder. [2034]

4. The Interpretation Act, 1889, shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament. [2035]

## MOTOR VEHICLES (CONSTRUCTION AND USE) (AMENDMENT) REGULATIONS, 1947

*S. R. & O., 1947, No. 1322*

*June 25, 1947*

Whereas in exercise of the powers conferred upon him by section 30 of the Road Traffic Act, 1930, the Minister of Transport (hereinafter referred to as "the Minister") made the Motor Vehicles (Construction and Use) Regulations, 1947 (hereinafter referred to as "the Principal Regulations");

And whereas Regulation 8 of the Principal Regulations makes provision for the equipment of motor vehicles and trailers with suitable and sufficient springs between each wheel and the frame of the vehicle except in certain cases;

And whereas it is expedient that the said Regulation should be amended by the addition of a further exception;

Now, therefore, the Minister in exercise of the powers conferred upon him as aforesaid and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

1. These Regulations shall come into force forthwith and may be cited as "The Motor Vehicles (Construction and Use) (Amendment) Regulations, 1947". [2036]

2. Regulation 8 of the Principal Regulations shall have effect as though the following were added after paragraph (viii) of the proviso:—

"(ix) any vehicle, all the wheels of which are equipped with pneumatic tyres, controlled by a pedestrian and not constructed or adapted for use or used for the carriage of a driver or passenger." [2037]

3. The Interpretation Act, 1889, shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament. [2038]

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## MOTOR VEHICLES (CONSTRUCTION AND USE) (AMENDMENT) (NO. 2) REGULATIONS, 1947

*S. R. & O., 1947, No. 1623*

*July 23, 1947*

Whereas in exercise of the powers conferred upon him by section 30 of the Road Traffic Act, 1930, the Minister of Transport (hereinafter referred to as "the Minister") made the Motor Vehicles (Construction and Use) Regulations, 1947 (hereinafter referred to as "the Principal Regulations");

And whereas it is expedient that until the 1st day of June, 1948, Regulation 31 of the Principal Regulations (which provides that every wheel of a motor tractor shall be equipped with pneumatic tyres or tyres of soft or elastic material except in the case of land tractors which comply with, amongst other requirements, the requirement that the tyre of every steering wheel should be smooth-soled and where the tyre touches the surface of the road should be not less than 2½ inches in width) should cease to apply to land tractors registered on or before the 1st day of June 1947, whether or not they comply with that requirement;

Now, therefore, the Minister in exercise of the powers conferred upon him as aforesaid and of all other powers enabling him in that behalf hereby makes the following Regulations:—

1. These Regulations shall come into force on the 29th day of July, 1947,



and may be cited as "The Motor Vehicles (Construction and Use) (Amendment) (No. 2) Regulations, 1947". [2039]

2. Regulation 31 of the Principal Regulations shall have effect in relation to land tractors registered on or before the 1st day of June, 1947, as though until the 1st day of June, 1948, the following words were omitted therefrom:—

"(i) the tyre of every steering wheel is smooth-soled and where the tyre touches the surface of the road it is not less than  $2\frac{1}{2}$  inches in width, and

(ii)". [2040]

3. The Interpretation Act, 1889, shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament. [2041]

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## ROAD VEHICLES LIGHTING EXEMPTION (REVOCATION) REGULATIONS, 1947

*S. R. & O., 1947, No. 1737*

*August 11, 1947*

The Minister of Transport in exercise of the powers conferred upon him by subsection (2) (a) of section 1 of the Road Transport Lighting Act, 1927, and of all other powers enabling him in that behalf hereby makes the following Regulations:—

1. These Regulations shall come into force on the 17th day of August, 1947, and may be cited as "The Road Vehicles Lighting Exemption (Revocation) Regulations, 1947". [2042]

2. The Regulations specified in the Schedule to these Regulations are hereby revoked, without prejudice however to the validity of anything done thereunder or to any liability incurred in respect of any act or omission before the date of the coming into force of these Regulations. [2043]

3. The Interpretation Act, 1889, shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament. [2044]

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### SCHEDULE

The Road Vehicles Lighting (City of Liverpool) Exemption Regulations, 1936.

The Road Vehicles Lighting (Mersey Dock Estate) Exemption Regulations, 1936.

The Road Vehicles Lighting (County Borough of Wallasey) Exemption Regulations, 1936.

The Road Vehicles Lighting (County Borough of Bootle) Exemption Regulations, 1936.

The Road Vehicles Lighting (County Borough of Birkenhead) Exemption Regulations, 1936. [2045]

### EXPLANATORY NOTE

*(This Note is not part of the Regulations, but is intended to indicate their general purport.)*

*The Road Transport Lighting Act, 1927, renders it obligatory for every vehicle on any road during the hours of darkness to carry lamps in accordance with the requirements of the Act and of any Regulations made thereunder, but the Minister of Transport is empowered by section 1 (2) (a), inter alia, to exempt horsedrawn vehicles from any of those requirements whilst carrying inflammable*

goods or whilst in places where inflammable material is handled or stored, provided that an application for such exemption is made by any body which is, in the Minister's opinion, a proper body so to apply.

The Regulations now revoked were made upon the application of bodies considered by the Minister to be proper bodies to apply, and these bodies have now applied for their revocation. They exempted horsedrawn vehicles from the requirements of the Act subject to certain conditions (a) when carrying cotton in the City of Liverpool, the County Borough of Wallasey and the County Borough of Bootle, and (b) whether carrying cotton or not, while within the Mersey Dock Estate and certain areas in Liverpool, Bootle and Birkenhead, being places where cotton is handled or stored.

## ROAD VEHICLES (REGISTRATION AND LICENSING) (AMENDMENT) REGULATIONS, 1947

S. R. & O., 1947, No. 2011

September 10, 1947

Whereas in exercise of the powers for the time being vested in him under (inter alia) Section 12 of the Roads Act, 1920, the Minister of War Transport made the Road Vehicles (Registration and Licensing) Regulations, 1941 (hereinafter referred to as "the Principal Regulations") ;

And whereas paragraph (2) of Regulation 26 of the Principal Regulations prescribes that certain requirements as to the exhibition and illumination of identification marks should be complied with by every mechanically-propelled vehicle registered for the first time on or after the first day of October, 1938, and that these requirements should be complied with by every mechanically-propelled vehicle as from the first day of October, 1942 ;

And whereas the last mentioned date has from time to time been postponed by divers Regulations, the last such postponement being until the first day of October, 1947 ;

And whereas it is expedient that mechanically-propelled vehicles other than those registered for the first time on or after the first day of October, 1938, should be wholly exempted from compliance with the said requirements ;

Now, therefore, the Minister of Transport in exercise of the powers conferred upon him by Section 12 of the Roads Act, 1920, and of all other powers enabling him in that behalf, hereby makes the following Regulations :—

1. These Regulations shall come into force on the first day of October, 1947, and may be cited as "The Road Vehicles (Registration and Licensing) (Amendment) Regulations, 1947". [2046]

2. Paragraph (2) of Regulation 26 of the Principal Regulations amended as aforesaid shall have effect as though the words "and as from the first day of October, 1947, every mechanically-propelled vehicle" were omitted. [2047]

3. The Interpretation Act, 1889, shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament. [2048]

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## CASES

*Street and aerial traffic—Hackney carriage—Licence—Change of ownership of licensed hackney carriage—New owner's right to amendment of licence and register—Town Police Clauses Act, 1847 (c. 89), s. 37.*

The licence in respect of a hackney carriage granted under the Town Police Clauses Act, 1847, s. 37, is granted to the carriage and not to the owner of the carriage, and, therefore, if a change of ownership takes place during the time for which the licence is valid, the new owner is entitled to have his name entered on the licence and the register of licences in place of that of the former owner.—*R. v. WEYMOUTH BOROUGH COUNCIL, Ex parte TELETAX (WEYMOUTH), LTD.*, [1947] K. B. 583; [1947] 1 All E. R. 779; [1947] L. J. R. 899; 177 L. T. 210; 111 J. P. 303; 63 T. L. R. 290; 45 L. G. R. 269. [2049]

*Street and aerial traffic—Pedestrian crossing—Controlled crossing—Duty of "approaching" driver—Interrupted view of crossing—Injury to passenger thereon—Pedestrian Crossing Places (Traffic) Regulations, 1941 (S. R. & O., 1941, No. 397), regulation 3.*

Regulation (3) of the Pedestrian Crossing Places (Traffic) Regulations, 1941, provides: "The driver of every vehicle approaching a crossing shall, unless he can see that there is no foot passenger thereon, proceed at such a speed as to be able if necessary to stop before reaching such crossing."

A pedestrian was knocked down by an omnibus while on a pedestrian crossing controlled by traffic lights. The lights were in favour of the driver, but his view of the crossing was masked by a stationary vehicle which was drawn up at the kerb on the crossing. When the omnibus became stationary, its front wheels were on the crossing:—

*Held*: (LORD GREENE, M.R., *dissenting*) the presence of the vehicle, which prevented the omnibus driver's having an uninterrupted view of the whole of the crossing, made it impossible for him to see that there was no foot passenger thereon; it was, therefore, his duty under regulation 3 to proceed at such a speed as to be able, if necessary, to stop before reaching the crossing; having failed to do so, he was in breach of the regulation; and that breach was a contributory cause of the accident.—*UPSON v. LONDON PASSENGER TRANSPORT BOARD*, [1947] K. B. 930; [1947] 2 All E. R. 509; 177 L. T. 475; 63 T. L. R. 452, C. A. [2050]

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## ORDERS, CIRCULARS AND MEMORANDA

### SPECIAL ENACTMENTS (EXTENSION OF TIME) ACT (EXPIRY) ORDER, 1947

S. R. & O., 1947, No. 1441

July 3, 1947

Whereas by subsection (2) of section six of the Special Enactments (Extension of Time) Act, 1940 (which Act provides for extensions of time in relation to the discharge of duties imposed, or the exercise of powers conferred, by statutory provisions of a local or private nature, and in relation to the exercise of powers to purchase, or powers of re-entry exercisable in relation to, public utility undertakings), it is provided that in that Act the expression "the period of the present emergency" during which applications for such extensions are required to be made means a period ending with such day as His Majesty may by Order in Council declare to be the day on which the emergency that was the occasion of the passing of that Act came to an end :

Now, therefore, His Majesty, in pursuance of the subsection aforesaid, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows :—

1. The thirtieth day of June nineteen hundred and forty-seven is hereby declared to be the day on which the emergency that was the occasion of the passing of the Special Enactments (Extension of Time) Act, 1940, came to an end. [2051]

2. This Order may be cited as the Special Enactments (Extension of Time) Act (Expiry) Order, 1947. [2052]

\* \* \* \* \*

## CASES

*Criminal law—Offences under temporary statute—Offence committed during currency of statute—Prosecution and conviction after expiry—Effect of expiry on operation "as respects things previously done"—Emergency Powers (Defence) Act, 1939 (c. 62), s. 11 (3).*

*Statutes—Operation—Temporary statute—Expiry—Effect of expiry on operation "as respects things previously done."*

The appellant was convicted on an indictment which charged him with doing acts likely to assist the enemy with intent to assist the enemy, contrary to the Defence (General) Regulations, 1939, reg. 2A, made under the Emergency Powers (Defence) Act, 1939, s. 1 (1). The acts with which the indictment charged the appellant were all committed between April, 1943, and January, 1944, and the trial took place on May 27 and 28, 1946. The Emergency Powers (Defence) Act, 1939, after numerous extensions, expired on February 24, 1946. S. 11 (3) of the Act provided : "The expiry of this Act shall not affect the operation thereof as respects things previously done or omitted to be done." The question for decision, which turned entirely on the construction which ought to be placed on that subsection, was whether the subsection authorised the conviction of the appellant notwithstanding the previous expiry of the Act :—

*Held* : giving the words of s. 11 (3) their natural meaning, it was clear that Parliament did not intend the subsection to expire with the rest of the Act and that its presence in the Act preserved the right to prosecute after the date of expiry.

*Per cur.* : when a statute enables an authority to make regulations, a

regulation which is validly made under the Act, *i.e.*, which is *intra vires* of the regulation-making authority, should be regarded as though it were itself an enactment : *Willingale v. Norris*, [1909] 1 K. B. 57, *approved*.

*Decision of the Court of Criminal Appeal*, [1946] 2 All E. R. 529, *affirmed*.—*Wicks v. DIRECTOR OF PUBLIC PROSECUTIONS*, [1947] A. C. 362; [1947] 1 All E. R. 205; [1947] L. J. R. 247; 176 L. T. 150; 63 T. L. R. 6; 45 L. G. R. 149, *sub nom. R. v. Wicks*, 32 Cr. App. Rep. 7, H. L. [2053]

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## STATUTES

### PENSIONS (INCREASE) ACT, 1947

(10 & 11 Geo. 6, c. 7)

#### PRELIMINARY NOTE

The main purpose of this Act, which received the Royal Assent on February 18, 1947, is to amend the Pensions (Increase) Act, 1944 (37 Halsbury's Statutes 521), the principal Act, so as to raise the income-limits governing entitlement to pension increases, to increase the rates of increase, and to continue that Act (as amended) permanently in force. In addition, the present Act makes a number of minor amendments to the principal Act in order to remove certain anomalies, enables its provisions to be extended to cover pensions not falling within it, and authorises further increases under the Pensions (Increase) Acts, 1920 and 1924 (16 Halsbury's Statutes 864, 932).

The Pensions Increase Act, 1944, which was designed to mitigate the rising cost of living, provided for increasing certain pensions granted in respect of service to the State or to a local authority. Before the amendment effected by the present Act, s. 1 of that Act (37 Halsbury's Statutes 522) provided that, subject to the detailed provisions of the section, a pension specified in Sched. I to that Act might be increased by an amount calculated in accordance with the provisions of Sched. II thereto, provided, however, that the pensioner's income did not, in the case of a pensioner who was married or had a dependant, exceed £300 a year, or, in any other case, £225 a year. The said Sched. II contained a scale of authorised increases, rising in the maximum case to a rate of 30 per cent. of the amount

of the pension. S. 2 of that Act made special and alternative provision in regard to pensions payable to civil servants and their dependants under the Superannuation Acts, 1834 to 1943. Where such a pension was less than £645 a year, that section authorised an increase in accordance with the scale set out in the section, irrespective of the other means of the pensioner.

The Act, which was a temporary measure, was due, in accordance with s. 10 (2) thereof, to expire on December 31, 1945, but was continued in force until March 31, 1947, by the Expiring Laws Continuance Act, 1945, s. 1 (2) and Sched., Part II (38 Halsbury's Statutes 437, 438).

S. 1 of the present Act provides for raising all the income limits and rates of increase of pensions mentioned above. Sub-s. (1) of the section raises the income limit governing increases to pensions under s. 1 of the principal Act, in the case of a pensioner who is married or has a dependent, from £300 to £450 a year, and in any other case, from £225 to £350 a year. Sub-s. (2) of s. 1 of the present Act raises the scale of authorised increases so that the amount of the increase in the maximum case is now at the rate of 40 per cent. Sub-s. (3) raises the amount of pension governing the entitlement to an increase to a pension, to which the provisions of s. 2 of the principal Act apply, from £645 a year to £787 10s. a year; while sub-s. (4) provides that these increases are to apply to any instalment of an increase of pension payable in respect of any period beginning on or after December 1, 1946, and for adjusting accordingly any instalment made before the passing of the Act on February 18, 1947.

A number of minor amendments to the principal Act are made by s. 2 of the present Act in order to remove anomalies which experience has shown to exist. The most important of these amendments, which is dealt with by sub-s. (1) of that section, deals with the position of a pensioner whose pension is increased under the principal Act and who is also in receipt of a non-contributory pension under the Old Age Pensions Act, 1936 (29 Halsbury's Statutes 1051). Such a pensioner might in certain circumstances be unfairly penalised by a strict adherence to the provisions of the Act, and the said sub-s. (1) is designed to allow flexibility in administration so as to secure to the pensioner the greatest possible amount in respect of the two pensions taken together.

S. 3 continues the Act of 1944 (as amended) in force as a permanent measure. It is, however, provided that no increase of pension is to be payable thereunder where the amount is determined by reference either to a rate of emoluments received on or after April 1, 1947, or to an average rate received over a period beginning on or after April 1, 1946. S. 4 deals with the position of pensioners whose pensions were increased under the provisions of the Pensions (Increase) Acts, 1920 and 1924 (16 Halsbury's Statutes 864, 932), which made provision for increasing pensions as a result of the 1914-1918 war corresponding to that made by the principal Act as a result of the last war. The section raises the income limits governing entitlement to an increase of pension under those Acts in order to prevent the reduction of any such increase in cases where the pensioner's income is increased as a result of the recent raising of the pension rates payable under the Widows', Orphans' and Old Age Contributory Pensions Act, 1936 (29 Halsbury's Statutes 1198).

Lastly, s. 5 applies to pension authorities paying pensions which do not fall within the provisions of the principal Act and yet cannot be increased because they are governed by statute: the section enables the Treasury to make regulations empowering any persons paying such pensions to pay the like increases as would be payable if they were pensions specified in Sched. I to the principal Act.

The annual cost of the increases provided for by the Act is estimated at approximately £9,600,000, of which about £2,500,000 will fall upon the rates and the balance upon the Exchequer. [2054]

#### ARRANGEMENT OF SECTIONS

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*An Act to authorise further increases under, and otherwise amend, the Pensions (Increase) Act, 1944, and to continue that Act in force as amended; to authorise further increases under the Pensions (Increase) Act, 1920; and to authorise increases in pensions to which that Act does not apply. [2055]*

[18th February 1947.]

**1. Raising of limits for, and rates of, pensions increases under principal Act.**—(1) The limit specified in the proviso to subsection (1) of section one of the Pensions (Increase) Act, 1944 (hereafter in this Act referred to as “the principal Act”), under which an increase of pension is not to be made under that section where the income of the pensioner exceeds the said limit, and in paragraph 4 of the Second Schedule to the principal Act, which restricts any such increase to the amount required to raise the income of the pensioner to the said limit, shall be increased as follows, that is to say,—

- (a) in the case of a pensioner who is married or has at least one dependant, from three hundred pounds a year to four hundred and fifty pounds a year;
- (b) in the case of any other pensioner, from two hundred and twenty-five pounds a year to three hundred and fifty pounds a year. [2056]

(2) For paragraphs 2 and 3 of the said Second Schedule (which specify the amounts of the increases in pensions authorised under the said section one) there shall be substituted the following paragraphs :—

“2. Where a pensioner is married or has at least one dependant, then, subject to the provisions of this Schedule :—

(a) if the pension does not exceed one hundred pounds a year, the authorised increase shall be forty per cent. of the amount of the pension :

(b) if the pension exceeds one hundred pounds a year but does not exceed one hundred and thirty-three pounds six shillings and eightpence a year, the authorised increase shall be the amount of forty pounds a year :

(c) if the pension exceeds one hundred and thirty-three pounds six shillings and eightpence a year but does not exceed two hundred pounds a year, the authorised increase shall be thirty per cent. of the amount of the pension :

(d) if the pension exceeds two hundred pounds a year but does not exceed three hundred and ninety pounds a year, the authorised increase shall be the amount of sixty pounds a year :

(e) if the pension exceeds three hundred and ninety pounds a year, the authorised increase shall be the amount which is necessary to increase the pension to four hundred and fifty pounds a year.

**3. Where a pensioner is unmarried and has no dependants then, subject to the provisions of this Schedule :—**

(a) if the pension does not exceed seventy-five pounds a year, the authorised increase shall be forty per cent. of the amount of the pension :

(b) if the pension exceeds seventy-five pounds a year but does not exceed one hundred pounds a year, the authorised increase shall be the amount of thirty pounds a year :

(c) if the pension exceeds one hundred pounds a year but does not exceed one hundred and fifty pounds a year, the authorised increase shall be thirty per cent. of the amount of the pension :



(d) if the pension exceeds one hundred and fifty pounds a year but does not exceed three hundred and five pounds a year, the authorised increase shall be the amount of forty-five pounds a year :

(e) if the pension exceeds three hundred and five pounds a year, the authorised increase shall be the amount which is necessary to increase the pension to three hundred and fifty pounds a year." [2057]

(3) For paragraph (c) of subsection (1) of section two of the principal Act (which provides that where a pension payable under the Superannuation Acts exceeds six hundred pounds a year but is less than six hundred and forty-five pounds a year the pension may be increased to six hundred and forty-five pounds a year) there shall be substituted the following paragraphs :

"(c) where the pension exceeds six hundred pounds a year but does not exceed seven hundred and fifty pounds a year, by five per cent. :

(d) where the pension exceeds seven hundred and fifty pounds a year but is less than seven hundred and eighty-seven pounds ten shillings a year, to seven hundred and eighty-seven pounds ten shillings a year." [2058]

(4) The foregoing provisions of this section shall apply to any instalment of an increase of pension payable under the principal Act in respect of any period beginning on or after the first day of December, nineteen hundred and forty-six, irrespective of the date at which an increase of the pension was first granted under the principal Act ; and any payment of such an instalment made before the passing of this Act shall be adjusted accordingly. [2059]

*Effect of section.*—See Preliminary Note, *ante*.

*Principal Act.*—The Pensions (Increase) Act, 1944 (see sub-s. (1), *ante*). For s. 1 (1), and s. 2 (1) (c) thereof, and Sched. II thereto, see 37 Halsbury's Statutes 522, 524, 529.

*Income of the pensioner.*—As to the calculation of a pensioner's income, see s. 3 of the principal Act (37 Halsbury's Statutes 524), as amended by s. 2 (2), *post*, and the Increase of Pensions (Calculation of Income) Regulations, 1944, S. R. & O., 1944, No. 695, made thereunder. The first £52 of a pensioner's income, apart from his pension and from any service pension he may have, is to be disregarded in making such calculation. Any addition to a pension by way of war bonus is to be set off against any increase payable under the principal Act.

*Pensions to which s. 1 of the principal Act applies.*—The pensions to which s. 1 of the principal Act applies are specified in Sched. I to the Act (37 Halsbury's Statutes 528) as extended by the Pensions (Increase) Act (Extension) Order, 1944, S. R. & O., 1944, No. 934, made under s. 4 of that Act. They cover pensions payable to the lower range of civil servants, to teachers, police and firemen, the Royal Irish Constabulary, local government officers, certain other school employees, collectors of taxes who were granted compensation allowances under the Finance Act, 1932, s. 29 (25 Halsbury's Statutes 206), on the abolition of their employment, midwives, registration officers, justices' clerks and their assistants, probation officers, servants of insurance committees and employees of the Standing Joint Committee for the County of London. The Treasury are empowered to make regulations authorising the payment of like increases in other cases (see s. 8, *post*).

*Scale of authorised increases to pensions to which s. 1 of the principal Act applies.*—As a result of the provision made by sub-s. (2) the scale of authorised increases in pensions to which s. 1 of and Sched. I to the principal Act apply is now as follows :—

	Amount of pension per annum	Authorised Increase
Married pensioner or pensioner with a dependant	not exceeding £100	40 per cent.
" "	£100—£133 6s. 8d.	£40 a year
" "	£133 6s. 8d.—£200	30 per cent.
" "	£200—£390	£60 a year
" "	exceeding £390	The amount required to bring the pension up to £450 a year
Unmarried pensioner with no dependants	not exceeding £75	40 per cent.
" "	£75—£100	£30 a year
" "	£100—£150	30 per cent.
" "	£150—£305	£45 a year
" "	exceeding £305	The amount required to bring the pension up to £350 a year

No increase of pension is payable where the income of a married pensioner or a pensioner with a dependant exceeds £450 or the income of an unmarried pensioner exceeds £350 (see the proviso to s. 1 (1) of the principal Act, as amended by sub-s. (1), *ante*).

It may be noted that the new scale of authorised increases includes lump sum increases; the increases previously authorised were all calculated on a percentage basis.

*Scale of authorised increases to pensions payable under Superannuation Acts.*—As a result of the amendment made by sub-s. (3), *ante*, to s. 2 of the principal Act, the scale of authorised increases to pensions payable under the Superannuation Acts is now as follows:—

Amount of pension per annum	Authorised increase
not exceeding £400	10 per cent.
£400–£600	7½ per cent.
£600–£750	5 per cent.
exceeding £750	The amount required to bring the pension up to £787 10s. a year

These increases are payable without regard being had to any other income of the pensioner, but, as in the case of increases to pensions under s. 1 of the principal Act, any addition to a pension by way of war bonus is to be set off against any increase of pension under the Act (see s. 3 (2) of the principal Act and the Increase of Pensions (Calculation of Income) Regulations, 1944, *ante*).

*Superannuation Acts.*—The Superannuation Acts referred to in s. 2 of the principal Act are the Superannuation Acts, 1834 to 1943. These comprise the Superannuation Acts, 1834, 1859, 1860, 1866, 1876, 1884, 1887, 1892, 1909, 1914 (16 Halsbury's Statutes 122, 179, 186, 238, 379, 551, 566, 686, 741, 772); the Superannuation (Prison Officers) Act, 1919 (13 Halsbury's Statutes 374); the Superannuation Act, 1935 (28 Halsbury's Statutes 295), and the Foreign Service Act, 1943, Part I (36 Halsbury's Statutes 45). See now also the Superannuation Act, 1946 (39 Halsbury's Statutes 721); s. 10 (1) of that Act provides that the Act, except s. 6 (1) thereof, shall be construed as one with the 1834 to 1943 Acts.

*Granting of increase.*—See the Increase of Pensions (General) Regulations, 1947, S. R. & O., 1947, No. 547, *post*, consolidating and amending S. R. & O., 1944, No. 694, and S. R. & O., 1945, Nos. 449 and 1554.

**2. Minor amendments of principal Act.**—(1) Nothing in subsection (7) of section one of the principal Act (which requires a pensions authority to make increases of certain pensions) shall prevent a pensions authority making such reduction in the amount of any increase payable under the said section one to a pensioner as may be necessary to secure, where the pensioner is in receipt of a non-contributory pension under the Old Age Pensions Act, 1936, that he shall receive the greatest possible amount in respect of the increase and the non-contributory pension taken together. [2060]

(2) In calculating the income of a pensioner for the purposes of section one of the principal Act and the Second Schedule thereto the amount of any service pension (as defined in that Schedule) shall be taken into account, and accordingly in paragraph (a) of subsection (1) of section three of the principal Act (which provides for disregarding the first fifty-two pounds a year of income otherwise than in respect of a pension specified in the First Schedule to the principal Act) after the word "Act" there shall be inserted the words "or a service pension as defined in the Second Schedule thereto". [2061]

(3) Nothing in subsection (1) of section five of the principal Act (which provides that expenditure in respect of certain increases shall be defrayed out of moneys provided by Parliament) shall affect the operation, in relation to increases of pensions under the principal Act, of the provisions of section fourteen of the Police Act, 1890, and section ten of the Police Pensions Act, 1921, as to the payment of pensions partly out of the police fund and partly out of moneys provided by Parliament. [2062]

(4) Where a person is in receipt of any pension not specified in the First Schedule to the principal Act, and an increase of the pension is payable under any scheme (wherever in force and whether or not authorised by or under any enactment), being a scheme determined by the Treasury for the purposes of this subsection to be similar to the provisions of the principal Act, then for the purposes of any increase of a pension specified in the First Schedule to the principal Act authorised by section one of that Act the

provisions of that Act shall apply in relation to the said person as if the first-mentioned pension were a pension specified in that Schedule of an amount equal to so much thereof as does not consist of any increase made under the said scheme, and as if that increase were an increase thereof authorised as aforesaid. [2063]

*Sub-s. (1).*—See Preliminary Note, *ante*. The effect of sub-s. (7) of s. 1 of the principal Act (37 Halsbury's Statutes 523) is to make the granting of the increases to pensions provided by that section, which in all other cases is at the discretion of the pension-paying authority, obligatory in the case of pensions payable by local authorities, police and fire authorities and by certain other bodies. The non-contributory pension payable under the Old Age Pensions Act, 1936 (29 Halsbury's Statutes 1051), is calculated in multiples of two shillings, and a small addition to a pensioner's means, as calculated under that Act for determining the rate of such pension, may have the effect of reducing the rate of such pension by two shillings a week. Accordingly, it is to a pensioner's advantage, in such cases, to receive such a slightly reduced rate of increase of pension under the principal Act as will serve to avoid a two-shilling reduction in the rate of his non-contributory pension. In cases where the payment of the increase of pension was discretionary, this adjustment could be, and was, effected by administrative action. The purpose of the present subsection is to enable it to be done also in cases where payment of increases is mandatory.

*Principal Act.*—The Pensions (Increase) Act, 1944 (see s. 1 (1), *ante*). For s. 1 thereof, see 37 Halsbury's Statutes 522.

*Old Age Pensions Act, 1936.*—29 Halsbury's Statutes 1051.

*Sub-s. (2).*—S. 3 (1) of the principal Act (37 Halsbury's Statutes 524) provides, *inter alia*, that a pensioner's income shall, for the purposes of s. 1 of, and Sched. II to, that Act be calculated in accordance with regulations made by the Treasury, which regulations are in particular to provide for disregarding the first £52 of a pensioner's income accruing otherwise than in respect of a pension to which s. 1 of that Act applies. The effect of inserting the words "or a service pension as defined in the Second Schedule thereto", as provided by the present subsection, is to bring such a pension within the income of a pensioner which is to be taken into account in calculating income for the purposes aforesaid. See the Increase of Pensions (Calculation of Income) Regulations, 1944 and 1947 (S. R. & O., 1944, No. 695; and S. R. & O., 1947, No. 1929, *post*).

*Police Act, 1890, s. 14.*—This section was repealed by the Police Pensions Act, 1921, s. 35 (3) and Sched. III (12 Halsbury's Statutes 890, 894), but regulations made under it unless and until revoked or varied continue in force.

*Police Pensions Act, 1921, s. 10.*—12 Halsbury's Statutes 878.

*Definitions.*—For definitions of "pension" and "pension authority," see s. 8 of the principal Act (37 Halsbury's Statutes 527).

*Sub-s. (3).*—It is provided by sub-s. (1) of s. 5 of the principal Act (37 Halsbury's Statutes 526) that any additional expenditure incurred as a result of the increases made by s. 1 thereof to pensions specified in Sched. I, Part I, to that Act are to be defrayed out of moneys provided by Parliament. However, s. 10 of the Police Pensions Act, 1921, *supra*, which deals with pensionable service in two or more of the following capacities—as a civil servant within the meaning of the Superannuation Act, 1887, as an officer on the staff of the Metropolitan Police, as a member of a police force with salary paid out of the police fund or wholly or partly out of moneys provided by Parliament—provides for payment of pensions in such cases partly out of the police fund and partly out of moneys provided by Parliament. In these circumstances, the present subsection provides that s. 5 (1) of the principal Act is not to affect the operation of s. 10 of the Police Pensions Act, 1921, in relation to increases of pensions under the principal Act.

**3. Continuance in force of principal Act.**—(1) The principal Act, as amended by the foregoing provisions of this Act, shall subject to the provisions of this section continue in force notwithstanding anything in subsection (5) of section eight or subsection (2) of section ten of the principal Act as to the expiry thereof; and accordingly the said subsections are hereby repealed. [2064]

(2) Where the amount of a pension is determined by reference to a rate of emoluments received on or after the first day of April, nineteen hundred and forty-seven, or by reference to an average rate of emoluments received over a period of service beginning on or after the first day of April, nineteen hundred and forty-six, no increase of the pension shall be payable under the principal Act. [2065]

(3) Where the amount of a pension is determined by reference to an average rate of emoluments received over a period of service (in this subsection referred to as "the relevant service") part of which was served before the last mentioned date—

(a) for the purposes of calculating the amount of any increase under the principal Act the pension shall be deemed to be of the like amount as the pension which could have been granted if it had

- fallen to be determined by reference to the average rate of emoluments received over so many years of the relevant service as were begun before the first day of April, nineteen hundred and forty-six ;
- (b) the amount of the increase which could be granted apart from this paragraph shall be reduced in the proportion which the relevant service less the years begun as aforesaid bears to the whole of the relevant service. [2066]

*Effect of section.*—See Preliminary Note, *ante*.

*Principal Act.*—The Pensions (Increase) Act, 1944 (see s. 1 (1), *ante*). For ss. 8 (5) and 10 (2) thereof, see 37 Halsbury's Statutes 528. S. 10 (2) provided that the Act should expire on December 31, 1945, and s. 8 (5) provided that nothing in the Act should authorise the increase of any pension in respect of any period after its expiry. The life of the Act was extended by the Expiring Laws Continuance Act, 1945, s. 1 and Sched., Part II (38 Halsbury's Statutes 437, 438).

*Definition.*—For definition of "pension," see s. 10 of the principal Act, *supra*.

**4. Increase of limits of income under Act of 1920.**—(1) The limits of one hundred and fifty pounds and two hundred pounds specified in paragraph (3) of section two of the Pensions (Increase) Act, 1920 (which makes it a condition for the increase of a pension under that Act that the means of the pensioner are less than one hundred and fifty pounds a year if unmarried, or two hundred pounds a year if married) and in proviso (ii) to paragraph 1 of the Schedule to that Act (under which no pension may be increased by an amount greater than is sufficient to bring the means of the pensioner up to the said limits) shall be increased to two hundred pounds and two hundred and seventy-five pounds respectively. [2067]

(2) In proviso (i) to paragraph 1 of the First Schedule to the said Act of 1920 (which provides that if the amount to which a pension may be increased under the scale set out in that paragraph is less than the amount to which a smaller pension might be increased, it may be increased to the latter amount) after the words "might be increased" there shall be inserted the words "or if a pension greater than such as may be increased under the said scale is less than the amount to which a smaller pension might be increased". [2068]

(3) The foregoing provisions of this section shall apply to any instalment of an increase of pension payable under the Pensions (Increase) Acts, 1920 and 1924, in respect of any period beginning on or after the first day of December, nineteen hundred and forty-six, irrespective of the date at which an increase of the pension was first granted ; and any payment of such an instalment made before the passing of this Act shall be adjusted accordingly. [2069]

(4) This section shall be construed as one with the Pensions (Increase) Acts, 1920 and 1924. [2070]

*Effect of section.*—See Preliminary Note, *ante*. This section was added to the Bill at the Committee Stage. The Financial Secretary to the Treasury, in moving the Second Reading of the clause, said :

"It was brought to our notice during the Recess that certain pensioners who got their pension by retirement twenty-five or even thirty years ago, and who received a pension increase after the last war under the Pensions (Increase) Act of 1920, and the further Act of 1924, might as a result of the recent increase given in the old age pension lose part or the whole of their increase under the 1920 Act. That was due to the fact that the income limits set in the Acts of 1920 and 1924 were too low. They were £150 in the case of a single man and £200 in the case of a married man. The new contributory pension of 26s. for a single individual and 42s. for a married couple mean an increase in the rates of £41 12s. and £57 4s. a year and we are now taking power in this clause to raise the income limits under the Acts of 1920 and 1924 to £200 and £275 respectively. That will permit this very small body of pensioners—there cannot be many of them left—to take advantage of and qualify for the increases in the new old-age pension which came into force on 1st October last" (432 H. of C. Official Report 412).

The increase in the rates of contributory pension under the Widows', Orphans' and Old Age Contributory Pensions Act, 1936, referred to by the Financial Secretary, were made by the National Insurance (Increase of Contributory Pensions) Regulations, 1946, S. R. & O., 1946, No. 1508.

*Pensions (Increase) Act, 1920, s. 2, para. 3, and Sched., para. 1, provisos (i), (ii).*—16 Halsbury's Statutes 864, 867.

*Pensions (Increase) Act, 1924.*—16 Halsbury's Statutes 932.

### 5. Payment of increases under schemes not falling within principal Act.—

(1) The Treasury may make regulations empowering any person or body of persons specified in the regulations to pay the like increases, of pensions payable by them or in respect of pensions otherwise payable by reference to service with them or to such service and other service, as would be payable if those pensions were pensions specified in the First Schedule to the principal Act. [2071]

(2) Regulations under this section may provide for increases thereby authorised taking effect as from such date after the passing of this Act, but whether before or after the coming into operation of the regulations, as may be specified therein. [2072]

(3) Any regulations under this section shall be laid before Parliament immediately after being made, and if either House of Parliament within the period of forty days beginning with the day on which the regulations were laid before it resolves that an Address be presented to His Majesty praying that the regulations be annulled, no further proceedings shall be taken thereunder after the date of the resolution, and His Majesty may by Order in Council revoke the regulations, so, however, that any such resolution and revocation shall be without prejudice to the validity of anything previously done under the regulations or to the making of new regulations.

In reckoning any such period of forty days as aforesaid, no account shall be taken of any time during which Parliament is dissolved or prorogued, or during which both Houses are adjourned for more than four days. [2073]

(4) Notwithstanding anything in subsection (4) of section one of the Rules Publication Act, 1893, regulations made under subsection (1) of this section shall not be deemed to be statutory rules to which that section applies. [2074]

*Effect of section.*—See Preliminary Note, *ante*.

*Principal Act.*—The Pensions (Increase) Act, 1944 (see s. 1 (1), *ante*). For Sched. I thereto, see 37 Halsbury's Statutes 528.

*Extension of increases to other pensions.*—A power of extending the provisions of s. 1 of the principal Act, providing for increases to pensions specified in Sched. I to the Act, *supra*, is provided by s. 4 thereof (37 Halsbury's Statutes 526). That power is, however, restricted in its application to certain classes of pensioners analogous to local government pensioners, and to probation officers or employees of insurance committees. Under that section the Pensions (Increase) Act (Extension) Order, 1944, S. R. & O., 1944, No. 934, was made. The provision made by the present section, under which the Treasury may make regulations empowering the payment of like increases to pensions as are provided by s. 1 of the principal Act, is in no way circumscribed. Moreover, the provision is more flexible. Increases to pensions which are made under the provisions of s. 4 are payable as if those pensions were specified in Part II of Sched. I to the Act, the effect of which, in accordance with s. 1 (7) of the Act (37 Halsbury's Statutes 523), is to make the payment of the increases obligatory on the paying authority. Increases to pensions under the present section, however, are to be payable as if the pensions were specified in Sched. I, *tout court*, and are payable at the discretion of the paying authority.

*Regulations and the effect of the Statutory Instruments Act, 1946.*—See the Increase of Pensions (Extension) Regulations, 1947, S. R. & O., 1947, No. 1930, *post*. The effect of the Statutory Instruments Act, 1946 (39 Halsbury's Statutes 784), which came into full operation on January 1, 1948 (see S.I. 1948 No. 3), is that documents made after its commencement in exercise of a power to make statutory rules within the meaning of the Rules Publication Act, 1893 (which by s. 4 thereof (18 Halsbury's Statutes 1018) includes regulations) are "statutory instruments" (see the Statutory Instruments Act, 1946, s. 1 (2); 39 Halsbury's Statutes 784).

Accordingly, regulations made under the present section after the commencement of the Act of 1946 are required to be laid before Parliament in accordance with the provisions of s. 4 of that Act in substitution for the corresponding provisions of the present section, and the provisions of s. 5 of that Act for annulment in pursuance of resolution of either House of Parliament are substituted for the corresponding provisions of this section.

*Rules Publication Act, 1893, s. 1 (4).*—18 Halsbury's Statutes 1016. That section requires that any "statutory rules," which, as defined in s. 4 thereof, includes "regulations," shall be published in the London Gazette at least forty days before they are made. The effect of sub-s. (4), *supra*, is to make this procedure unnecessary in the case of regulations made under the present section. The Act of 1893 is repealed by the Statutory Instruments Act, 1946, s. 12 (39 Halsbury's Statutes 789), which Act is discussed in the preceding note.

*Definition.*—For definition of "pension," see s. 8 of the principal Act (37 Halsbury's Statutes 527).

### 6. Short title, construction, citation and interpretation.—(1) This Act may be cited as the Pensions (Increase) Act, 1947, and, except in so far as it is

directed to be construed with the Pensions (Increase) Acts, 1920 and 1924, shall be construed as one with the principal Act; and that Act and this Act, except as aforesaid, may be cited as the Pensions (Increase) Acts, 1944 and 1947. [2075]

(2) References in this Act to any enactment shall be construed, except where the context otherwise requires, as references to that enactment as amended by any other enactment, including this Act. [2076]

*Pensions (Increase) Acts, 1920 and 1924.*—16 Halsbury's Statutes 864, 932.

*Principal Act.*—The Pensions (Increase) Act, 1944 (37 Halsbury's Statutes 522) (see s. 1 (1), *ante*).

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## FINANCE ACT, 1947

(10 & 11 Geo. 6, c. 35)

### GENERAL NOTE

Under the heading "Retirement and other benefits for directors and employees", ss. 19–23 of this Act make special provision to prevent retirement benefit schemes from being used, particularly by the directors of limited companies, as a means of tax avoidance.

Where bodies corporate and certain unincorporated bodies make contributions under schemes for retirement or other benefits for their directors or employees, the sums so paid are for purposes of income tax to be deemed income of those directors or employees and chargeable to tax under Sched. E accordingly, subject to insurance relief where appropriate (ss. 19 (1) and 23 (6)). In addition, where agreements are in force between such parties for the provision of retirement or other benefits but no amounts are actually paid, the benefits when due being met out of the funds of such bodies, a notional figure is to be taken as taxable income of the directors or employees concerned during the years of their employment (s. 19 (2)).

There are, however, a number of exemptions from these provisions, including exemption for payments under statutory superannuation schemes (s. 20 (1)) and for schemes approved by the Commissioners of Inland Revenue (s. 21 (1)). As local government superannuation schemes will presumably be exempted as having statutory authority, it has not been thought necessary to include the text of the sections in this volume. [2077]

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## PROBATION OFFICERS (SUPERANNUATION) ACT, 1947

(10 & 11 Geo. 6, c. 38)

### PRELIMINARY NOTE

The main purpose of the Probation Officers (Superannuation) Act, 1947, which came into force on July 31, 1947, the date of the Royal Assent, is to provide for winding up the existing superannuation arrangements for probation officers and for placing them under the Local Government Superannuation Act, 1937 (30 Halsbury's Statutes 385), in the same way as local government officers. For the first time probation officers' clerks are to be superannuable as such.

Part I of the Criminal Justice Act, 1925 (11 Halsbury's Statutes 395 *et seq.*), provided for the appointment for every probation area of one or more probation officers to undertake the supervision of persons under probation orders, for the selection of probation officers, payment of salaries and expenses and other incidental matters. Among these was the superannuation of probation officers: S. 1 (3) of the Act empowered the Secretary of State by scheme to make such arrangements as he thought fit with a view to the provision of superannuation allowances or gratuities for probation officers or their legal personal representatives and it was under this power that the Secretary of State made the Probation Officers' Superannuation Rules, 1926 (S. R. & O., 1926, No. 1354/L.36), by which detailed



provision for such superannuation was made. However, the Act of 1925 contained no power to vary the scheme so made, and accordingly various defects which from time to time appeared could be set right only by Act of Parliament.

The Home Secretary, in introducing the Bill for Second Reading in the House of Commons on June 18, 1947, told of four such defects (438 H. of C. Official Report 2148 *et seq.*). First, the contributions paid by serving probation officers were fixed according to their age at entry, the pensions being at the rate of £6 for each completed year of service for a man and £4 for a woman, instead of being related in some way to the salary received at the end of service as in most modern pension schemes (Probation Officers' Superannuation Rules, 1926, *supra*, rr. 5 and 10 and Sched. I). Secondly, the existing scheme was limited to probation officers under the age of forty on appointment to full-time employment, which meant that an officer appointed for part-time duties who later became a full-time officer was not entitled to a pension if appointed after the age of forty (Probation Officers' Superannuation Rules, 1926, *supra*, r. 10 and Sched. I). Thirdly, the scheme applied only to full-time to the exclusion of part-time officers (Probation Officers' Superannuation Rules, 1926, *supra*, rr. 1 and 3). Fourthly, no provision was made for the superannuation of probation officers' clerks as such.

These superannuation provisions were brought into force before local government superannuation became compulsory throughout the country and in view of the comprehensive nature of the local government provisions it was decided that instead of modifying the existing arrangements, it would be more satisfactory to bring probation officers under the Local Government Superannuation Act, 1937 (30 Halsbury's Statutes 385), which would not only correct the defects but make much more effective provision for superannuation allowances and gratuities.

Accordingly, s. 1 (1) of the Act empowers the Secretary of State by order to apply the provisions of the Act of 1937 or of any local superannuation enactment (as defined in sub-s. (5) of the same section) having effect in lieu thereof in a particular district, to probation officers and their clerks subject to any necessary adaptations, and to transfer the liabilities of the existing superannuation fund for probation officers to the new funds under which such officers will come. Wide incidental powers are given by s. 1 (3), but probation officers in the City of London are excepted from transfer (s. 1 (1) (a)).

Various safeguards have been included in the Act in relation to orders of the Secretary of State thereunder. Before any such order is made the Secretary of State is to give notice to the associations of local authorities concerned and is to take into consideration any representations submitted as a result (s. 3 (1)). Again, orders are to be laid before Parliament and can be avoided by resolution of either House. Different provision may be made for different classes of probation officers and clerks (s. 1 (3)), and care has been taken on this occasion to include power to vary or revoke orders made (s. 3 (2)).

Of the minor provisions, s. 1 (6) provides that the Act is not to affect the operation of the Local Government Staffs (War Service) Act, 1939 (32 Halsbury's Statutes 1118), and the increase of probation officers' pensions permitted under the Pensions (Increase) Acts, 1944 and 1947 (37 Halsbury's Statutes 521; 10 & 11 Geo. 6, c. 7), is extended to their clerks. Various consequential amendments and repeals in relation to the Criminal Justice Act, 1925, are provided for by s. 2 of and the Schedule to the Act. [2078]

#### ARRANGEMENT OF SECTIONS

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SCHEDULE.—Consequential amendments and repeals of provisions of the Criminal Justice Act, 1925 .. .. .	685

*An Act to make fresh provision with respect to the payment of superannuation allowances and gratuities to or in respect of probation officers and certain former probation officers and to make provision with respect to the payment of such*



*allowances and gratuities to or in respect of clerks appointed to assist probation officers in the performance of their duties.* [2079] [31st July 1947.]

**1. Superannuation of probation officers and clerks to probation officers.—**

(1) The Secretary of State may by order apply to—

- (a) probation officers appointed under Part I of the Criminal Justice Act, 1925 (hereinafter referred to as “probation officers”) other than probation officers in the City of London, or any class of probation officers other than as aforesaid; and
- (b) clerks appointed to assist probation officers in the performance of their duties either by probation committees or the Secretary of State or before the first day of July, nineteen hundred and forty-four, by probation officers, or any class of clerks so appointed;

the provisions of the Local Government Superannuation Act, 1937, or of a local superannuation enactment, subject in any case to such adaptations, modifications and exceptions as he thinks fit, and transfer, to such superannuation funds maintained under the said Act of 1937 or a local superannuation enactment as may be specified in the order, the liabilities of the superannuation fund established under the arrangements made by the Secretary of State under subsection (3) of section one of the Criminal Justice Act, 1925 (hereinafter referred to as the “existing superannuation arrangements”) in respect of the payment of superannuation allowances under those arrangements to persons who, immediately before the coming into operation of the order, are entitled to receive such allowances under those arrangements. [2080]

(2) The provisions applied by any such order as aforesaid shall, in relation to probation officers to whom the existing superannuation arrangements apply, have effect in lieu of those arrangements. [2081]

(3) An order under this section may, so far as relating to probation officers and clerks, make different provision with respect to different classes thereof, and may contain such incidental, consequential and supplemental provisions as appear to the Secretary of State to be requisite or expedient for the purposes of the order, and (without prejudice to the generality of this subsection) may provide—

- (a) for the winding up of the superannuation fund established under the existing superannuation arrangements and the distribution of the assets thereof remaining after the payment of the expenses of the winding up amongst superannuation funds maintained under the Local Government Superannuation Act, 1937, or a local superannuation enactment; and
- (b) for the payment by probation committees to superannuation funds so maintained of sums requisite to prevent the arising therein of deficiencies that would otherwise arise by reason of provisions of the order requiring the reckoning of service before the date of the coming into operation of the order. [2082]

(4) Section four of the Pensions (Increase) Act, 1944 (which, subject to the limitations imposed by the Pensions (Increase) Act, 1947, enables pensions payable in respect of service as a probation officer to be increased) shall have effect as if the reference to such service included a reference to service as such a clerk as is mentioned in paragraph (b) of subsection (1) of this section. [2083]

(5) In this section the expression “local superannuation enactment” means a local Act as defined by the Local Government Superannuation Act, 1937, whereunder a superannuation fund is maintained by a local Act authority as so defined, any instrument having effect under such an Act and any other enactment (whether contained in a public general or local Act) relating

to the payment by such an authority to or in respect of an employee of theirs of gratuities or compensation for death or injury. [2084]

(6) Nothing in this section shall affect the operation of the Local Government Staffs (War Service) Act, 1939. [2085]

*Criminal Justice Act, 1925, Part I.*—11 Halsbury's Statutes 395 *et seq.* As to the effect of this Part of the Act, see the Preliminary Note, *ante*.

S. 1 (1) (a) and (b).—Note the power to apply orders either to probation officers in general or to specific classes of such officers, similar provision being made in the case of clerks. In addition, sub-s. (3) of the present section, *ante*, expressly provides that different provision may be made by the Secretary of State with respect to different classes of probation officers and clerks.

*Superannuation of probation officers' clerks.*—Whilst the Act makes the first provision for superannuation of these clerks as such, it was the practice of some local authorities to appoint a clerk to their service and then second him to the probation service, retaining him in their own superannuation scheme for pension purposes. To some extent, therefore, it depended upon local arrangements whether or not clerks were entitled to pensions (see 438 H. of C. Official Report 2149).

July 1, 1944.—The date when the Probation Rules, 1944, S. R. & O., 1944, No. 700/L.30, came into operation. Rule 9 thereof inserted a new rule 74A in the Probation Rules, 1926, S. R. & O., 1926, No. 577/L.17, whereby Probation Committees and, in London, the Secretary of State, were empowered to appoint one or more clerks for assisting probation officers in the performance of their duties and to pay them reasonable remuneration.

*Local Government Superannuation Act, 1937.*—30 Halsbury's Statutes 385. The principal Act governing the superannuation of local government officers. The Local Government and Other Officers' Superannuation Act, 1922 (10 Halsbury's Statutes 863), which it repealed was an adoptive Act, but the Act of 1937, with minor exceptions, required all local authorities to maintain a superannuation fund, or to make provision, by combining with another authority in maintaining a joint superannuation fund or otherwise, for the superannuation of their officers and of such other employees as were brought within the scheme.

*Local superannuation enactment.*—*E.g.* the Manchester Corporation Acts, 1920 and 1946. For the definition of this term, see sub-s. (5) of this section, *ante*.

Under s. 1 (2) of the Local Government Superannuation Act, 1937 (30 Halsbury's Statutes 387), there were excepted from the obligation to maintain a superannuation scheme under that Act local authorities who "not having adopted the Act of 1922, maintain a superannuation fund under a local Act," and Part II of that Act (30 Halsbury's Statutes 407 *et seq.*) made detailed provision for the modification of local Act schemes so as to bring them more closely into alignment with the general principles of the Act of 1937.

It is therefore appropriate that the provisions to be applied to probation officers should be those either of the Local Government Superannuation Act, 1937, or the local superannuation enactment, whichever is operative in the individual circumstances, though adaptations, modifications and exceptions may be made as the Secretary of State thinks fit.

*Existing superannuation arrangements.*—See the Preliminary Note, *ante*.

*Pensions (Increase) Acts.*—For the Pensions (Increase) Act, 1944, s. 4, see 37 Halsbury's Statutes 526, and for the application of the Act to probation officers, see para. 8 of the Sched. to the Pensions (Increase) Act (Extension) Order, 1944, S. R. & O., 1944, No. 934. For the Pensions (Increase) Act, 1947, see *ante*.

*As defined by the Local Government Superannuation Act, 1937.*—By s. 40 (1) of this Act (30 Halsbury's Statutes 416) the term "local Act" is to include a provisional order confirmed by Parliament. S. 1 (3) of the same Act provides that "a council mentioned in Part I of the First Schedule to this Act who, not having adopted the Act of 1922, maintains a superannuation fund under a local Act" is referred to as a "local Act authority" and the said Part I comprises a list of the types of local authorities whose whole-time officers are to be compulsorily superannuable. The Act of 1922, referred to *supra*, is the earlier adoptive Local Government and Other Officers' Superannuation Act, 1922 (10 Halsbury's Statutes 863).

*Local Government Staffs (War Service) Act, 1939.*—32 Halsbury's Statutes 1118. By s. 3 of and the First Schedule to this Act probation officers who undertake war service, as defined, are to have the period of their war service, for superannuation purposes, aggregated with their earlier service and accordingly reckoned as probation service as regards "any rules or scheme relating to the superannuation of probation officers made under the Criminal Justice Act, 1925" (Local Government Staffs (War Service) Act, 1939, s. 14). As to the limiting date under this Act, see title OFFICERS OF LOCAL AUTHORITIES, *ante*.

Note the provisions of s. 4 (4) of the last-mentioned Act whereby the probation authority are to pay to the appropriate Superannuation Fund for Probation Officers at the normal times for payment (a) any sums the officer would have contributed if he had continued to serve in his civil capacity, together with (b) any contributions the authority would itself have paid in that event.

Note also s. 6 (3) of the same Act under which any questions arising are to be determined in accordance with the rules or scheme relating to the superannuation of probation officers (see *supra*).

**2. Consequential amendments and repeals.**—As from the coming into operation of the order first made under this Act—

(a) the provisions of the Criminal Justice Act, 1925, specified in the first column of Part I of the Schedule to this Act shall have effect subject to the amendments specified in relation to those provisions respectively in the second column of that Part of that Schedule; and

- (b) the provisions of that Act specified in the first column of Part II of the Schedule to this Act shall be repealed to the extent specified in the second column of that Part of that Schedule. [2086]

*Order first made under this Act.*—This wording is necessitated by s. 3 (2), *infra*, whereby any order under the Act may be varied or revoked by a subsequent order so that, in theory at least, any number of orders may be made under the Act.

*Criminal Justice Act, 1925.*—11 Halsbury's Statutes 395.

**3. Provisions as to orders.**—(1) Before making an order under this Act the Secretary of State shall cause notice thereof to be given in such manner as he thinks fit to any association of local authorities who may be affected thereby, and shall take into consideration any representations with respect thereto which may be submitted to him by any such association. [2087]

(2) An order under this Act may be varied or revoked by a subsequent order made by the Secretary of State subject to the like conditions as the original order. [2088]

(3) An order under this Act shall be laid before Parliament immediately after it is made, and if either House of Parliament within the period of forty days beginning with the day on which the order is laid before it resolves that it be annulled, it shall thereupon become void, but without prejudice to the validity of anything previously done thereunder or to the making of a new order.

In reckoning any such period of forty days as aforesaid, no account shall be taken of any time during which Parliament is dissolved or prorogued, or during which both Houses are adjourned for more than four days. [2089]

(4) Section one of the Rules Publication Act, 1893, shall not apply to an order under this Act. [2090]

*Notice to be given.*—This provision is inserted because of the financial arrangements between the Home Office and local authorities incidental to any such orders. Note that the Secretary of State is only required to "take into consideration" any representations submitted.

An amendment to include the National Association of Probation Officers, at the Committee Stage in the House of Commons on June 27, 1947, was withdrawn on an assurance by the Under-Secretary of State for the Home Department that, so far as that Department was concerned, whenever the interests of probation officers were under discussion the probation officers would be taken into consultation (439 H. of C. Official Report 881).

*Effect of the Statutory Instruments Act, 1946.*—This Act came into full operation on January 1, 1948 (see S.I. 1948 No. 3). The effect of the Act is that documents made after its commencement in exercise of certain statutory powers conferred by Acts passed before its commencement are "statutory instruments" (s. 1 (2); 39 Halsbury's Statutes 784); accordingly such documents are required to be laid before Parliament in accordance with the provisions of s. 4 of that Act in substitution for the corresponding provisions of the present section, and the provisions of s. 5 of that Act for annulment in pursuance of resolution of either House of Parliament are substituted for the corresponding provisions of the present section.

Only such documents, however, as are made in exercise of certain statutory powers are "statutory instruments"; these powers are identified by reference to the Rules Publication Act, 1893 (18 Halsbury's Statutes 1016), and are powers conferred on a "rule-making authority" to make "statutory rules," both of which are defined in s. 4 of that Act. A statutory rule means a "rule, regulation or bye-law made under any Act" by, among others, any government department; *prima facie*, therefore, a departmental order or scheme is not a "statutory rule" and would not, if made after the commencement of the Statutory Instruments Act, 1946, under a power conferred by an earlier Act, be a "statutory instrument" in the absence of express provision to the contrary. But the meaning of "statutory rule" in s. 1 (2) of the Statutory Instruments Act, 1946 (39 Halsbury's Statutes 784), has been extended by the Statutory Instruments Regulations, 1947 (S.I. 1948 No. 1) with the result that orders referred to in the present section become "statutory instruments" if made on or after January 1, 1948.

**4. Expenses.**—Any increase in the sums payable under subsection (3) of section five of the Criminal Justice Act, 1925, out of moneys provided by Parliament which is attributable to the passing of this Act shall be defrayed out of moneys so provided. [2091]

*Criminal Justice Act, 1925, s. 5 (3).*—11 Halsbury's Statutes 398. This subsection provides that there shall be paid out of moneys provided by Parliament, towards the expenditure of local authorities under Part I of that Act and towards the expense of maintaining persons released on probation, such sums as the Secretary of State with the approval of the Treasury may with the like approval determine.

**5. Short title and extent.**—(1) This Act may be cited as the Probation Officers (Superannuation) Act, 1947. [2092]

(2) This Act shall not extend to Scotland or Northern Ireland. [2093]

## SCHEDULE

### Section 2 CONSEQUENTIAL AMENDMENTS AND REPEALS OF PROVISIONS OF THE CRIMINAL JUSTICE ACT, 1925

#### PART I

##### AMENDMENTS

<i>Provision, and subject matter thereof</i>	<i>Amendment</i>
Subsection (1) of section five (Expenses incurred by probation committee in respect of salaries of, and superannuation allowances or gratuities to, probation officers etc., to be defrayed by local authority in whose area the probation area is situate).	The reference to superannuation allowances or gratuities to probation officers shall be construed as including a reference to superannuation allowances, gratuities or compensation payable, by virtue of an order under this Act, to or in respect of probation officers and clerks appointed by probation committees or probation officers to assist probation officers in the performance of their duties.
Paragraph (c) of subsection (1) of section nine (Sums directed by the Secretary of State to be paid in respect of salaries and superannuation allowances or gratuities payable in the case of probation officers appointed by him for the metropolitan police court district to be defrayed out of the metropolitan police fund).	The reference to superannuation allowances or gratuities payable in the case of probation officers appointed by the Secretary of State shall be construed as including a reference to superannuation allowances, gratuities or compensation payable, by virtue of an order under this Act, to or in respect of probation officers so appointed and clerks so appointed to assist such officers in the performance of their duties. [2094]

*References.*—For the Criminal Justice Act, 1925, ss. 5 (1) and 9 (1) (c), see 11 Halsbury's Statutes 398, 400.

#### PART II

##### REPEALS

<i>Provision</i>	<i>Extent of Repeal</i>
Section one .. ..	Subsection (3), except as respects persons who, immediately before the coming into operation of the order first made under this Act, are entitled to receive a superannuation allowance under the existing superannuation arrangements.
Section two .. ..	In subsection (5), in paragraph (b), the words "and any superannuation allowances or gratuities payable under this Part of this Act".
Section eight .. ..	In paragraph (b), the words "and for regulating superannuation allowances and gratuities payable in the case of probation officers". [2095]

*References.*—For the Criminal Justice Act, 1925, ss. 1, 2 and 8, see 11 Halsbury's Statutes 395, 396, 400.

## ORDERS, CIRCULARS AND MEMORANDA

### TEACHERS SUPERANNUATION (DISABLED PERSONS' TRAINING) SCHEME, 1947

*S. R. & O., 1947, No. 146*

*January 23, 1947*

*Note.*—This Scheme was made by the Minister of Education with the consent of the Treasury under s. 21 (1) (b) of the Teachers (Superannuation) Act, 1925 (7 Halsbury's Statutes 336).

1. As respects periods of service after the 31st March, 1946, the provisions of Part II of the Teachers (Superannuation) Act, 1925, as amended by any subsequent enactment (which Act as so amended is hereinafter referred to as "the Act"), shall apply to persons employed full-time in the capacity of teachers in an Institution for the Further Education and Training of Disabled Persons in respect of which a grant is made by the Minister of Labour and National Service as if such employment were contributory service for the purposes of the Act, subject to the modifications that—

(a) no service in such capacity as aforesaid shall be treated as service in respect of which superannuation allowances or gratuities may be granted unless:—

(i) the teacher has completed satisfactorily a course of training approved by the Minister of Education for the purposes of this Scheme; or

(ii) the service has been preceded by recognised or contributory service under the Act; or

(iii) the service is, on the recommendation of the Minister of Labour and National Service, approved by the Minister of Education for the purposes of this Scheme; and

(b) in Section 9 (2) of the Act the reference to Regulations of the Minister of Education relating to the payment of grant shall be construed as a reference to arrangements of the Minister of Labour and National Service relating to such payment. [2096]

2. This Scheme may be cited as the Teachers Superannuation (Disabled Persons' Training) Scheme, 1947. [2097]

\* \* \* \* \*

#### EXPLANATORY NOTE

*(This Note is not part of the Scheme, but is intended to indicate its general purport.)*

*As from 1st April, 1946, certain institutions for the Further Education and Training of Disabled Persons are to be grant-aided by the Ministry of Labour and National Service instead of the Ministry of Education.*

*The purpose of this Scheme is:—*

(i) *To enable teachers therein to continue in contributory service under the Teachers (Superannuation) Acts, and,*

(ii) *To secure that superannuation contributions payable by the employers of such teachers shall continue to attract Government grant.*

### TEACHERS SUPERANNUATION AMENDING RULES, 1947

*S. R. & O., 1947, No. 493*

*March 20, 1947*

*Note.*—These Rules were made by the Minister of Education, with Treasury consent after due consultation, under s. 17 of the Teachers (Superannuation) Act, 1925 (7 Halsbury's Statutes 333).

1. These Rules may be cited as the Teachers Superannuation Amending Rules, 1947. [2098]

2. These Rules shall have effect as from the date on which they are sealed, in substitution for the Teachers Superannuation Provisional Amending Rules, 1945, but shall not affect the operation of those Rules in relation to periods before that date. [2099]

3. The Interpretation Act, 1889, applies for the purpose of the interpretation of these Rules as it applies for the purpose of the interpretation of an Act of Parliament. [2100]

4. In these Rules unless the context otherwise requires—

- “ the Minister ” means the Minister of Education ;
- “ approved ” means approved by the Minister for the purposes to which the context relates ;
- “ Authority ” means Local Education Authority ;
- “ 1925 Act ” means the Teachers (Superannuation) Act, 1925 ;
- “ 1937 Act ” means the Teachers (Superannuation) Act, 1937 ;
- “ 1944 Act ” means the Education Act, 1944, as amended by the Education Act, 1946 ;
- “ 1945 Act ” means the Teachers (Superannuation) Act, 1945 ;
- “ existing Rules ” means the Teachers Superannuation Rules, 1926, as amended by the Teachers Superannuation Amending Rules, 1930, the Teachers Superannuation Amending Rules, 1937, and the Teachers Superannuation Amending Rules, 1941 ;
- “ maintained ” means maintained by an Authority under the 1944 Act. [2101]

#### *Operation of Existing Rules*

5.—(1) Rules 7, 11 and 32 of the existing Rules shall operate only as respects periods before the 1st April, 1945.

(2) The remainder of the existing Rules shall continue to operate as respects periods both before the 1st April, 1945, and after the 31st March, 1945 :

Provided that—

- (i) Rule 9 which prescribes the time within which a teacher must have been employed in recognised or contributory service before the date on which he applies for a superannuation allowance or gratuity as therein mentioned, shall have effect with the addition of the following words—  
 “ or such longer period as the Minister may allow in any case where he is satisfied that there is sufficient cause for the application not having been made within six months ” ;
- (ii) paragraph (a) of Rule 12 shall extend to contributions under the 1945 Act ;
- (iii) the proviso to paragraph (2) of Rule 18 shall extend to the appropriate contributions payable to the Minister in pursuance of Section 5 (2) of the 1945 Act ;
- (iv) Rule 27, which provides for the computation of average salary shall have effect with the substitution of the words “ other than a period of absence under Section 11 (1) of the 1925 Act or under Section 2 of the 1937 Act ” for the words “ other than a period of absence under Section 11 (1) of the Act ” ;
- (v) the existing paragraph (1) of Rule 28, which provides for the treatment of absence on sick leave as service, shall operate only as respects periods before the 1st April, 1945, and as respects periods after the 31st March, 1945, the following paragraph shall take its place :—

“(1) Absence on sick leave shall be treated as service, but shall not be so treated—

- (a) unless the employer approves it and, if so required, furnishes the Minister with satisfactory evidence on the subject ;
  - (b) after a teacher has been continuously absent on sick leave for more than twelve months ;
  - (c) after a medical certificate has been given which shows that the teacher has become permanently incapable through infirmity of mind or body of serving efficiently as a teacher in contributory service ;
  - (d) during any period in which the teacher received less than half-pay ” ; and
- (iv) the existing paragraph (4) of Rule 28, which provides for the treatment of absence on special leave for the purpose of attending a course of instruction as service, shall operate only as respects periods before the 1st April, 1945, and as respects periods after the 31st March, 1945, the following paragraph shall take its place :—

“(4) Where a teacher is granted special leave for the purpose of attending an approved course of instruction or for some other approved reason relating to his service as a teacher, the period of absence may be treated as service in addition to any period of absence which may be treated as service under paragraph (8) of this Rule.” [2102]

#### *New Rules*

6. The kinds of service on or after the 1st April, 1945, which are herein-after prescribed shall be contributory service—

#### *Section 1 (1) (d) of the 1945 Act*

- (a) service in the capacity of a teacher in a Special School, not being a maintained school, by any person who is a qualified teacher within the meaning of any Regulations in force for the time being made by the Minister under the 1944 Act or whose employment is approved for the purpose of this Rule ;
- (b) service in the capacity of a teacher in an Approved School by any person who is a qualified teacher as aforesaid or who was in recognised or contributory service in such a school before the 1st April, 1945, or who is recognised by the Home Office as duly qualified to teach in such a school ;
- (c) service in the capacity of a teacher in a school provided by the Council of a County or County Borough under the provisions of Section 53 of the Poor Law Act, 1930, by any person who is a qualified teacher as aforesaid or who was employed in contributory service in such a school before the 1st April, 1945, or whose employment is approved for the purpose of this Rule ;

#### *Section 1 (1) (e) of the 1945 Act*

- (d) service in the capacity of a teacher in a certified institution as defined by Section 71 of the Mental Deficiency Act, 1913, by any person who is a qualified teacher as aforesaid or who was employed in recognised or contributory service in such an institution before the 1st April, 1945, or whose employment is, for the purpose of this Rule, approved on the recommendation of the Board of Control ;



- (e) service in the capacity of a teacher employed by a local authority in the exercise of their functions under paragraph (cc) of Section 30 of the Mental Deficiency Act, 1913, by any person who is a qualified teacher as aforesaid or whose employment is, for the purpose of this Rule, approved on the recommendation of the Board of Control ;

*Section 1 (1) (g) of the 1945 Act*

- (f) service in the capacity of a teacher, employed within the scope of Section 1 (1) (g) of the 1945 Act, by any person who is a qualified teacher as aforesaid or whose employment is, for the purpose of this Rule, approved on the recommendation of the Board of Control.  
[2103]

*Section 2 (1) and (2) of the 1945 Act*

7.—(1) The prescribed time within which application shall be made to the Minister by any person who is employed in service of a kind approved in pursuance of Subsection (1) or Subsection (2) of Section 2 of the 1945 Act, and who wishes to make such application, shall be—

- (a) the period ending with the 30th September, 1945, in the case of a person so employed at any time within the period beginning with the 1st April, 1945, and ending with the 1st July, 1945 ; and  
(b) the period of three calendar months beginning with the date on which employment begins in the case of a person so employed after the 1st July, 1945.

(2) The prescribed manner in which such application shall be made is that prescribed by Schedule I to these Rules. [2104]

*Section 3 (2) of the 1945 Act*

8.—(1) The prescribed time within which a person who is subject to an independent superannuation scheme by virtue of Subsection (2) of Section 3 of the 1945 Act, and who wishes to withdraw from such scheme, shall elect so to withdraw shall be—

- (a) the period ending with the 30th September, 1945, in the case of a person who becomes employed in contributory service at any time within the period beginning with the 1st April, 1945, and ending with the 1st July, 1945 ; and  
(b) the period of three calendar months beginning with the date on which employment begins in the case of a person who becomes employed in such service after the 1st July, 1945.

(2) The prescribed manner in which such election shall be made is that prescribed by Schedule II to these Rules. [2105]

*Section 5 (1) of the 1945 Act*

9.—(1) The prescribed time within which a person who is employed in contributory service as provided by Subsection (1) of Section 5 of the 1945 Act and who wishes to make application to the Minister that his service before the 1st April, 1945, be treated for the purposes of the 1925 Act as if it had been contributory service or recognised service, shall make such application shall be—

- (a) the period ending with the 30th September, 1945, in the case of a person so employed at any time within the period beginning with the 1st April, 1945, and ending with the 1st July, 1945 ; and  
(b) the period of three calendar months beginning with the date on which employment begins in the case of a person so employed after the 1st July, 1945.

(2) The prescribed manner in which such application shall be made is that prescribed by Schedule III to these Rules. [2106]

*Section 5 (2) of the 1945 Act*

10.—(1) The contributions in respect of service after the 31st May, 1922, and before the 1st April, 1945, which is treated as if it had been contributory service or recognised service by virtue of the provisions of Subsection (1) of Section 5 of the 1945 Act, shall be paid directly to the Minister on or before the 31st March, 1947.

(2) If the Minister extends the time prescribed by paragraph (1) of this Rule for the payment of any contribution, compound interest at 4 per cent. per annum with annual rests shall be payable on such contribution in respect of the extended period.

(3) Contributions payable under this Rule shall be attributable to the financial year in which they are received by the Minister, and Rule 18 of the existing Rules shall have effect accordingly. [2107]

*Paragraph 4 of the First Schedule to the 1945 Act*

11. Service before the 1st April, 1945, in the capacity of a certificated or uncertificated teacher or service before that date in the capacity of a teacher which is approved on the recommendation of the Board of Control for the purpose of this Rule is hereby prescribed for the purpose of paragraph 4 of the First Schedule to the 1945 Act. [2108]

12. These Rules shall be construed as one with the existing Rules. [2109]

## SCHEDULE I

### (RULE 7 (2))

#### *Ministry of Education*

Application for service to be treated as contributory service under Section 2 of the Teachers (Superannuation) Act, 1945.

\* Here insert name in full.

I\* .....

Address.....

Reference number (Ministry of Education),

if allotted.....

Date of birth.....

† Here insert “(1)” if employed by a L.E.A. or “(2)” if employed by a voluntary organisation.

hereby make application to the Minister of Education for my employment after the 31st day of March, 1945, in service approved by the Minister for the purposes of sub-section †..... of Section 2 of the Teachers (Superannuation) Act, 1945, to be treated as contributory service for the purposes of the Teachers (Superannuation) Act, 1925.

Signature.....

Date.....

## SCHEDULE II

(RULE 8 (2))

*Ministry of Education*

Election under Section 3 of the Teachers (Superannuation) Act, 1945, to withdraw from an independent superannuation scheme.

I\* ..... \* Here insert name in full.

Address.....

Reference number (Ministry of Education),

if allotted .....

Date of birth.....

hereby elect to withdraw from the independent superannuation scheme established or carried on by† .....

Signature.....

Date.....

† Here insert name of L.E.A. or other body having the management of the scheme.

NOTE.—This form should be signed in duplicate and one copy should be sent to the Ministry of Education and the other to the persons having the management of the independent superannuation scheme. [2111]

## SCHEDULE III

(RULE 9 (2))

*Ministry of Education*

Application under Section 5 of the Teachers (Superannuation) Act, 1945, for service before the 1st April, 1945, to be treated as if it had been recognised or contributory service as the case may be.

I\* ..... \* Here insert name in full.

Address.....

Reference number (Ministry of Education),

if allotted.....

Date of birth .....

being a †..... employed in contributory

service by \*\*.....

hereby make application to the Minister of Education for my service before the 1st day of April, 1945, of the kind defined in the First Schedule to the Teachers (Superannuation) Act, 1945 (other than my service before the †..... day of.....) to be treated as if it had been recognised or contributory service as the case may be for the purposes of the Teachers (Superannuation) Act, 1925.

† Here insert "teacher" or "organiser" as the case may be

\*\* here insert name of L.E.A. or other employer.

† Here complete the date or strike out as the case may be.

Signature.....

Date.....

[2112]

## EXPLANATORY NOTE

*(This Note is not part of the Rules, but is intended to indicate their general purport.)*

*These Rules, which replace the Teachers Superannuation Provisional Amending Rules, 1945 :—*

- (a) continue the operation of the Teachers Superannuation Rules of 1926 (as amended) with minor modifications mainly required as a result of the passage of the Teachers (Superannuation) Act, 1945 ; and*
- (b) embody new Rules necessitated by the passage of the last-mentioned Act.*

INCREASE OF PENSIONS (GENERAL) REGULATIONS,  
1947

*S. R. & O., 1947, No. 547*

*March 26, 1947*

The Lords Commissioners of His Majesty's Treasury, in pursuance of Their powers under sub-section (5) of Section 3 of the Pensions (Increase) Act, 1944 (which Act, as amended by the Pensions (Increase) Act, 1947, is hereinafter referred to as "the Act") and of all other powers enabling Them in that behalf, hereby make the following Regulations :—

1. These Regulations may be cited as the Increase of Pensions (General) Regulations, 1947. [2113]

2.—(1) In these Regulations :

- (a) the expression "dependant" has the meaning assigned to it in Section 1 (5) of the Act ;
- (b) the expression "income", in relation to any person, means income of that person calculated in accordance with Regulations made by the Treasury under Section 3 (1) of the Act ;
- (c) the expression "the prescribed conditions" means the conditions prescribed in Section 1 of the Act and the Second Schedule thereto ;
- (d) other expressions which are defined in the Act or in Regulations made by the Treasury under Section 3 (1) of the Act have the same meanings as in the Act or in those Regulations, as the case may be ;
- (e) references to an increase of pension under Section 1 of the Act include references to an increase under that Section of any pensions specified in an Order in Council made under Section 4 of the Act ; and
- (f) references to a pensioner who is unmarried include references to a pensioner who in accordance with these Regulations is treated as unmarried for the purposes of the Act.

(2) The Interpretation Act, 1889, applies to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament. [2114]

3.—(1) The first application for the grant of an increase of pension under Section 1 of the Act shall be made by the pensioner to the Authority from whom payment of the pension is received not more than three months before, or as soon as may be after, the prescribed conditions are fulfilled in his case.

(2) An application for the continuation and reassessment of an increase

in pension shall be made to the Pension Authority not more than 3 months or less than 2 months before the expiration of the current grant of increase.

Provided that where the increase has been granted for a period beginning before 1st April, 1946, the application for continuation and reassessment shall be made as soon as practicable after the date of these Regulations.

(3) An application by a pensioner under the age of seventeen years shall be made on his behalf by the person who appears to the Pension Authority to have control over the pensioner. [2115]

4.—(1) Every such application as aforesaid shall, unless this requirement is dispensed with under Regulation 6 hereof, be accompanied by a Declaration by the pensioner in the form of Declaration X set out in the First Schedule hereto or in a form substantially to the like effect.

Provided that in the case of a second or subsequent application where none of the events mentioned in Regulation 11 has occurred since the pensioner last made a Declaration, the Pension Authority may, at its discretion, accept a Declaration in the form of Declaration Y set out in the First Schedule hereto or in a form substantially to the like effect.

(2) Every application by a pensioner who is unmarried but claims to have a dependant shall also be accompanied by a Declaration by the person claimed as the dependant in the form of Declaration Z set out in the First Schedule hereto or in a form substantially to the like effect. [2116]

5.—(1) Where a pensioner who has fulfilled the prescribed conditions for any period after the 31st day of December, 1943, dies (whether before or after the date of these Regulations) and at the time of his death a grant or renewal of the increase of pension for which he was eligible under the Act had not been made to him or an adjustment of increase already granted or renewed was outstanding the Pension Authority shall, for the purposes of the grant or renewal of an increase or an adjustment thereof up to the time of his death, accept, in place of the application declaration and evidence which was, or might have been, required from the deceased pensioner under these Regulations, an application or declaration made or evidence produced on the deceased pensioner's behalf by his personal representative or by any person from whom the Pension Authority may obtain a discharge for payment of the increase.

(2) Where any person who is, or is claimed to be a dependant of a pensioner dies (whether before or after the date of these Regulations) without having made the declaration or produced the evidence required of him under these Regulations, the Pension Authority shall, for the purposes of the grant of an increase to the pensioner or an adjustment thereof, accept, in place of such declaration or evidence, a declaration made or evidence produced by that person's personal representative or by any other person who appears to the Authority a proper person to represent the deceased. [2117]

6. The Pension Authority may in its discretion dispense with the requirement of a Declaration under Regulation 4, in the case of any application for the increase of an annual allowance awarded by the Treasury under an Injury Warrant framed under Section 1 of the Superannuation Act, 1887 (as amended by Section 11 of the Superannuation Act, 1935) and under Section 5 of the Superannuation Act, 1909, if

- (a) the amount of the allowance does not exceed £25, and
- (b) the person in respect of whose injury the allowance has been granted was recruited outside the United Kingdom, and
- (c) the Pension Authority is satisfied
  - (i) that on account of the illiteracy of the pensioner or other sufficient cause it is impracticable to obtain a Declaration from him, and
  - (ii) that the income of the pensioner does not exceed the limits prescribed in sub-section (1) of Section 1 of the Act. [2118]

7.—(1) The statements in any Declaration as to the amounts of income shall be made with reference to the income of the basic period.

(2) The basic period shall be

(a) in the case of the first application by a pensioner and of any person claimed to be a dependant of his, the period of twelve months ending in the day before the date from which he is entitled to an increase of pension under the Act, and

(b) in the case of the second and any subsequent application, the period of twelve months preceding the date of the application.

(3) Other statements in any such Declaration shall be made by reference to the circumstances existing at the date of the Declaration in question except in the case of a Declaration made on behalf of a deceased pensioner or dependant where such other statements shall be made by reference to the circumstances existing at the date of death.

(4) A pensioner shall submit to the Pension Authority with the Declaration required to be made by him as aforesaid particulars of any events of the kinds mentioned in Regulation 11 which occurred between the end of the basic period and the date of his Declaration. [2119]

8.—(1) Where a pensioner and his wife, or her husband, are living apart, then if

(a) the pensioner gives notice in writing to the Pension Authority electing that they shall be treated as unmarried persons for the purposes of the Act, and

(b) it appears to the Pension Authority

(i) that the separation has continued for not less than twelve months and is likely to be permanent, and

(ii) that the pensioner's wife or husband either is not in receipt of a pension which may be increased under the Act or, if in receipt of such a pension, is willing as regards the increase of her or his pension to be treated in accordance with this Regulation as unmarried for the purposes of the Act they shall, subject to the provisions of these Regulations, be treated as unmarried persons for the purposes of the Act as from the beginning of the period falling after the expiration of the twelve months mentioned in (i) of this sub-paragraph for which an increase is or has been payable under the Act or the date (not being after the date on which the notice of election is given) specified in the pensioner's notice of election whichever is the later.

(2) A pensioner may give notice of election under this paragraph notwithstanding that he has been granted an increase of pension under the Act as a married person.

(3) A pensioner who gives notice of election under paragraph (1) of this Regulation (otherwise than on the occasion of an application for a grant or renewal of an increase) shall

(a) inform the Pension Authority whether, to the best of his knowledge and belief, his wife or her husband is in receipt of a pension which may be increased under the Act and, if so, give the name of the Pension Authority by whom the wife's or husband's pension is payable;

(b) furnish to the Pension Authority such evidence as the Pension Authority may require as to the matters mentioned in sub-paragraph (b) of paragraph (1) of this Regulation.

(4) Any notice or information furnished under paragraph (3) of this Regulation shall, if the Pension Authority so require, be in the form of a Declaration. [2120]

9.—(1) Every Declaration made under these Regulations shall be subscribed before and attested by one of the persons described in the Second Schedule hereto, not being the husband or wife of the person making the Declaration.

(2) Every Declaration which is hereby required to be made by a child under the age of 17 years shall be made on his behalf by the person who appears to the Pension Authority to have control over the child. [2121]

10.—(1) The amount of any increase of pension shall be determined by reference to the income during the basic period but the Pension Authority shall take into consideration, as from the appropriate date, any reduction of income or any increase of income during or subsequent to the basic period.

(2) The first grant of an increase shall remain in force until the 31st March, 1947, or the 31st March next but one following the date from which the increase was payable, whichever date is the later and any subsequent grant of an increase may remain in force for twenty-four months. Provided that, where an increase has been granted for a period starting before 1st April, 1946, the Pension Authority shall have discretion to extend the grant for such period beyond the 31st March, 1947, as may be necessary to enable the pensioner to make an application for the continuance of the increase. And Provided also that, as from the appropriate date, the increase shall cease or shall be subject to such adjustment, if any, as the case may require if in the meantime

- (a) the pensioner dies, or
- (b) there occurs any such event as is mentioned in Regulation 11, or
- (c) in the case of an increase of a pension on the basis that the pensioner and his wife or her husband are treated as unmarried persons for the purposes of the Act, it appears to the Pension Authority that any of the conditions mentioned in (i) and (ii) of sub-paragraph (b) of paragraph (1) of Regulation 8 have ceased to be fulfilled or have never been fulfilled, or
- (d) the pensioner ceases for any other reason to fulfil the prescribed conditions.

(3) Where an increase of pension is to cease or to be adjusted by reason of the occurrence of any event or, as mentioned in paragraph (2) (d) hereof by reason that it appears to the Pension Authority that certain conditions have ceased to be fulfilled, the appropriate date shall be the date on which the event occurred, or, as the case may be, the date which appears to the Pension Authority to be the date on which the conditions ceased to have been fulfilled provided that the appropriate date shall be the date on which the Pension Authority first knew that the event had occurred or, as the case may be, that the conditions had ceased to be fulfilled if

- (a) the pensioner has not been responsible for any unreasonable delay in notifying the Pension Authority that the event had occurred, or, as the case may be, the conditions had ceased to be fulfilled, and
- (b) that date is more favourable to the pensioner.

(4) Where an increase of pension is to cease or to be adjusted by reason that certain conditions have never been fulfilled, the appropriate date shall be the beginning of the period in respect of which that increase was granted. [2122]

11. Any pensioner to whom an increase of pension has been granted shall notify the Pension Authority immediately on the occurrence of any of the following events, quoting the number, if any, of his Pension Form :—

- (a) any increase in the income of the pensioner or the pensioner's wife or husband from any source (other than casual earnings) by which



- (i) if the pensioner is married the total income of both husband and wife is increased to a rate above £450 a year, or
  - (ii) if the pensioner is unmarried and has no dependant, his total income is increased to a rate above £350 a year, or
  - (iii) if the pensioner is unmarried and has a dependant, his total income is increased to a rate above £450 a year ;
- the total income in any of such cases to be reckoned as including any increase of pension granted under the Act and otherwise in accordance with the Increase of Pensions (Calculation of Income) Regulations, 1944, as amended from time to time ;
- (b) any decrease in the income of the pensioner or of the pensioner's wife or husband ;
  - (c) the marriage, divorce or re-marriage of the pensioner, or the death of his wife (or her husband) ;
  - (d) if the pensioner and his wife or her husband have been treated as unmarried persons for the purposes of the Act, their resumption of cohabitation, or the receipt by the wife or husband of a pension which may be increased under the Act ;
  - (e) if the pensioner is unmarried
    - (i) the death of any dependant,
    - (ii) the attainment of the age of sixteen years by any dependant, not being related to the pensioner,
    - (iii) a dependant's ceasing to hold the qualifications necessary to remain a dependant of the pensioner,
    - (iv) any increase in the income of any dependant of his from any source (excluding income received from him or, in the case of a dependant who is under the age of sixteen years or, if over that age, is receiving full-time instruction in any educational establishment or undergoing training for any trade, profession or vocation, from a scholarship or other educational endowment) by which the total income of the dependant (excluding as aforesaid) exceeds £52 a year. [2123]

12. The pensioner and any person who is, or is claimed to be a dependant of his shall, if required by the Pension Authority, produce :—

- (a) any medical evidence or any birth, death or marriage certificate or any other evidence relative to the fulfilment of the prescribed conditions which the Authority may consider necessary,
- (b) a certificate of an Inspector of Taxes as to the assessment for the purposes of income tax under Schedule A of any property owned by him or under Schedule B of any land occupied by him,
- (c) a certificate of an Inspector of Taxes in support of any claim to a deduction from the assessment for income tax purposes under Schedule A of any property owned by him,
- (d) documentary evidence in support of any claim for deduction from the income of the pensioner or his wife or her husband in respect of interest, ground-rent or (in Scotland) feu duty or ground annual or other annual charges,
- (e) any other documentary evidence relating to the income of the pensioner or his wife or her husband or any person who is, or is claimed to be, a dependant of the pensioner which the Authority may consider necessary. [2124]

13. Where the Pension Authority is satisfied by an Order of Court or by the certificate of a duly qualified medical practitioner that a pensioner or person claimed to be a dependant is of unsound mind, or, not being under the age of seventeen years, is otherwise incapable of making a Declaration

in the prescribed form, it may accept a Declaration made on his behalf by any other person who appears to the Authority a proper person to represent him. [2125]

14. Any question which may arise in connection with the fulfilment by a pensioner who is in receipt of a pension specified in Part I of the First Schedule to the Act of the prescribed conditions, or any of them, shall be determined by the Pension Authority, whose decision shall be final. [2126]

15. Where part of a pension has been surrendered by a pensioner for the purpose of enabling the Pension Authority to grant a pension to the wife or husband of the pensioner under any arrangement whereby a pension is payable to the wife or husband of the pensioner during the pensioner's lifetime, then, for the purpose of determining the percentage by reference to which the authorised increase of each of those pensions is to be calculated under the Second Schedule to the Act and the percentage by reference to which the increase of each of those pensions is to be calculated under Section 2 of the Act, each of the pensions shall be deemed to be of an amount equal to the aggregate of the two pensions. [2127]

16.—(1) In relation to any pension granted under the Elementary School Teachers (Superannuation) Acts, 1898 to 1912 all the functions of the Treasury as the Pension Authority shall be performed by the Minister of Education on behalf of the Treasury and accordingly, in relation to such a pension, references to the Pension Authority in these Regulations shall be construed as references to the Minister of Education.

(2) Where in relation to any such pension as is specified in paragraph I of Part II of the First Schedule to the Act the Pension Authority is not the last employing authority the functions of the Pension Authority as to determining whether the pensioner fulfils, or has fulfilled the prescribed conditions and, if so, the amount of the increase of the pension under the Act, shall be performed on behalf of the Pension Authority by the last employing authority unless the Pension Authority and the last employing authority agree that the said functions shall be performed by the Pension Authority. [2128]

17. The Increase of Pensions (General) Regulations, 1944, the Increase of Pensions (General) (Amendment) Regulations, 1945 and the Increase of Pensions (General) (Amendment) (No. 2) Regulations, 1945, are hereby revoked. [2129]

\* \* \* \* \*

## THE FIRST SCHEDULE

### DECLARATION X

Declaration by a Pensioner claiming an increase of pension under the  
Pensions (Increase) Acts, 1944 and 1947

Any person who, for the purpose of obtaining, either for himself or herself or for any other person, any sum payable by virtue of the Act, knowingly makes any false statement or false representation is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding fifty pounds or to both such imprisonment and such fine.

DETAILED STATEMENT OF INCOME FOR THE TWELVE MONTHS ENDED.....  
..... 19... (See Instruction 1.)

(The Instructions at the end should be carefully read and complied with.)

NOTE.—The income to be shown is the gross income, both that of the pensioner and that of the pensioner's wife or husband. Any deduction which has to be made from the gross income in respect of the first £52 of such income will be made by the Pension Authority. IT IS NOT SUFFICIENT TO LEAVE ANY SPACE BLANK. THE WORD "NONE" SHOULD BE WRITTEN AGAINST EACH HEADING UNDER WHICH THE CLAIMANT HAS NO INCOME. In order to avoid delay in the award of increase, the declaration should be carefully completed in every respect.

*Gross figures before  
deduction of Income  
Tax to be given*

	<i>Pensioner</i>			<i>Pensioner's wife or husband</i>		
	£	s.	d.	£	s.	d.
(a) Present yearly amount of increasable pension (including any increase given under former Acts but excluding any increase under the Acts of 1944 and 1947) .. .. .						
(b) Yearly amount of any non-contributory old-age pension .. .. .						
(c) Yearly amount of other pensions (including Service, Disability, Old Age, Contributory and Supplementary Pensions, if any), grants, allowances including family allowances or annuities. (See Instruction 2) .. .. .						
(d) Net annual value of house property or land. (See Instruction 3) .. .. .						
(e) Interest or dividends on Stocks, Shares, Mortgages or other Securities or Bank Deposits, including Post Office Savings Bank. (See Instruction 4) .. .. .						
(f) Profits from trade, business or profession. See Instruction 5) .. .. .						
(g) Wages of employment or vocation. Overtime pay, bonus, and the value of free board, rooms, quarters, lodgings, fuel, uniform, or other benefits should be included. (See Instruction 6) .. .. .						
(h) (1) Profits from sub-letting. (See Instruction 7) .. .. .						
(2) Profits from payments in respect of board and lodging. (See Instruction 7) .. .. .						
(i) Yearly value of assistance, whether in money or in kind (including free maintenance), received from other sources .. .. .						
(j) Income from any other sources. (See Instruction 6) .. .. .						
TOTALS .. .. .	£			£		

£ s. d.

TOTAL INCOME OF PENSIONER AND WIFE (OR HUSBAND)

CHARGES ON INCOME OF PENSIONER AND OF WIFE (OR HUSBAND)  
for which deductions are claimable. (See Instruction 8) ..

*Gross figures  
before deduction  
of Income Tax*  
£ s. d.

Ground Rent (or in Scotland, Feu duty or Ground Annual) .. .. .  
Interest on mortgages, loan debts, bank overdraft, etc.  
Other annual charge, if any .. .. .

NOTE.—No deduction will be allowed on account of Insurance Premiums, or Rates and Taxes.

TOTAL CHARGES .. .. .

TOTAL INCOME OF PENSIONER AND WIFE (OR HUSBAND) less CHARGES for the period of twelve months ended .....

PARTICULARS OF ANY CHANGES IN INCOME DURING THE PERIOD OF TWELVE MONTHS TO WHICH THE ABOVE STATEMENT RELATES. (Not to be left blank. If there has been no change the word "NONE" should be inserted).....

I DECLARE (i) that I am :—

- (a) married ;
  - (b) married, but I and my wife have been separated for more than twelve months and elect to be treated as unmarried (see Instruction 9) ;
  - (c) unmarried (or a widower or widow) ;
  - (d) unmarried (or a widower or widow), but with someone dependent on me (see Instruction 10).
- (ii) that the total income of myself and of my wife or husband from all sources is as stated above ; and that I am.....years of age, and I make this declaration believing it to be true.

Strike out the three statements which do not apply.

Signature of claimant (See Instruction 11).....

Pension or Establishment No. (if any).....

Retiring Rank .....

Present address .....

Date of birth .....

Present Occupation (if any) .....

Name and address of present Employer (if any).....

Relationship of dependant if claimant falls with category (d) above .....

Declared and subscribed before me this.....day of..... 19 .

.....Signature of Attestor.

.....Address.

.....Qualification.

#### INSTRUCTIONS

(Information specified in these instructions may be given, if necessary, on a separate sheet.)

1. If this is your first application for an increase of pension, the period to be covered by your statement of income is the twelve months ending on the day before that on which you became entitled to pensions increase. For second and subsequent applications the period is the period of twelve months immediately preceding the date of the declaration.

2. State the name and address of the Authority or Body from whom the pension is received in each case, and the reference number if known.

3. State nature and precise situation of such property, with name of occupiers. Include property held under a ground lease. For property in Great Britain or Northern Ireland the net annual value is to be in accordance with the Income Tax assessment under Schedule A, particulars of which may be obtained from the Local Inspector of Taxes.

4. State full particulars of income received from investments. (Name of security, amount held, and rate of interest.)

5. State nature and particulars of business and where carried on. The amount shown should be that accepted by H.M. Inspector of Taxes for Income Tax purposes.

6. State full particulars.

7. State gross amount received and particulars of deductions made in assessing profit.

8. State full particulars of charges, rate of interest, on what property charged, and to whom payable, etc.

9. State—

- (i) date from which you have been separated from your wife (or husband) ;
- (ii) whether the separation is likely to be permanent ;
- (iii) whether your wife (or husband) is in receipt of a pension which may be increased under the Act, and if so give as full details of the pension as you can with the name of the Pension Authority ;
- (iv) full name of wife (or husband) ;
- (v) the residence of your wife (or husband), if known ;
- (vi) the date from which you elect to be treated as unmarried (if more than twelve months after the date from which the separation has continued).

10. If you claim to be in category (d) your dependant must complete " Declaration Z " copies of which are obtainable from the Authority from whom you draw your pension.

11. A pensioner unable to write must have his mark duly witnessed by the attester.

#### DECLARATION Y

*Declaration by a Pensioner claiming a further grant of pension increase under the Pensions (Increase) Acts, 1944 and 1947, when there has been no change of circumstances since the previous Declaration.*

Any person who, for the purpose of obtaining, either for himself or herself or for any other person, any sum payable by virtue of the Act, knowingly makes any false statement or false representation is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding fifty pounds or to both such imprisonment and such fine.

The instructions at the end should be carefully read and complied with.

I hereby declare that since I made my last Declaration on or about .....  
(here insert approximate date of last Declaration) :—

#### (a) As a Married Pensioner

Strike out the  
two paragraphs  
of (a) (b) & (c)  
which do not  
apply.

- (i) There has been no increase in the income of myself or of my wife (or husband) from any source (other than casual earnings) by which the combined income of myself and of my wife (or husband) is increased to a rate above £450 a year. (See Instruction 1.)
- (ii) My wife (or husband) has not died, nor have I been divorced.
- (iii) That my wife (or husband) and myself being separated, and having elected to be treated as unmarried persons for the purposes of the Act have not resumed cohabitation, and that my wife (or husband) has not received a pension which may be increased under the Act.

#### (b) As an Unmarried Pensioner with no Dependant

- (i) There has been no increase in my income from any source (other than casual earnings) by which my total income is increased to a rate above £350 a year (see Instruction 1).
- (ii) I have not been married  
I have been married but my wife (husband) died on.....  
.....(Date).

#### (c) As an Unmarried Pensioner with a Dependant

- (i) There has been no increase in my income from any source (other than casual earnings) by which my total income is increased to a rate above £450 a year (see Instruction 1).
- (ii) I have not been married.  
I have been married but my wife (husband) died on.....  
.....(Date).
- (iii) My dependant has not died or reached the age of 16 years or ceased to hold any qualification necessary to remain a dependant (see Instruction 2).
- (iv) There has been no increase in the dependant's income from any source which causes the income to exceed £52 a year (see Instruction 3).

Signature of claimant (See Instruction 4) .....

Pension or Establishment No. (if any) .....

Retiring Rank of Officer .....

Present address .....

Date of birth .....

Present Occupation (if any) .....

Name and address of present Employer (if any) .....

.....

Declared and subscribed before me this..... day of .....

19 .

.....Signature of Attestor.

.....Address.

.....Qualification.

## INSTRUCTIONS

1. In reckoning income you may exclude the first £52 per annum of income other than any pension which is already or may be increased under the Pensions (Increase) Acts, 1944 and 1947, or a service pension which is similarly eligible for an increase. Income is to be reckoned in accordance with the Increase of Pensions (Calculation of Income) Regulations, 1944, and should include any pensions increase you are receiving already. If you are in any doubt whether your income has risen above £350 or £450 as the case may be, you should consult your Pension Authority or fill in Declaration X instead of the present Declaration. If there has been any *decrease* in your income which may entitle you to a higher pension increase, you should fill in Declaration X.

2. One qualification necessary for a dependant over the age of 16 years who is not related to the pensioner is receipt of full-time instruction at an educational establishment or training for a trade, profession or vocation.

3. Exclude income received from the pensioner or from a scholarship or other educational endowment.

4. A pensioner unable to write must have his mark duly witnessed by the attester.

## DECLARATION Z

*Declaration to be made by the Dependant of a Pensioner claiming an increase of pension under the Pensions (Increase) Acts, 1944 and 1947*

Any person who, for the purpose of obtaining, either for himself or herself or for any other person, any sum payable by virtue of the Act, knowingly makes any false statement or false representation is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding fifty pounds or to both such imprisonment and such fine.

The instructions at the end should be carefully read and complied with.

I hereby declare that during the year ended ..... my total income from all sources, excluding all income received from ..... (here insert the name of the pensioner on whom you are dependent) or from a scholarship or other educational endowment did not exceed £52. (See Instruction (1)).

To the best of my information, knowledge and belief, the above statement is true.

Signature of Dependant .....

(Where the dependant is a child under the age of 17, the Declaration should be signed by the person who appears to the Pension Authority to have control over the child.)

Address of Dependant .....  
 Date of Birth of Dependant .....  
 Relationship, if any, to Pensioner .....

If over 16 years of age and not related to the pensioner state the name of the educational establishment at which you are receiving full-time instruction, or give details of the training you are undergoing for some trade, profession or vocation .....

Declared and subscribed before me this ..... day of .....

19 .

.....Signature of Attestor.

.....Address.

.....Qualification.

#### INSTRUCTIONS

(1) Income is to be computed in accordance with the provisions of the Increase of Pensions (Calculation of Income) Regulations, 1944, and must include :—

- (i) interest or dividends on stocks, shares, mortgages or other securities or bank deposits, including Post Office Savings Bank ;
- (ii) wages of employment or vocation, including overtime, bonus and value of board, rooms, quarters, lodgings, fuel, uniform and other benefits ;
- (iii) value of assistance, whether in money or in kind (including free maintenance) received from any source (other than the pensioner) ;
- (iv) any pensions, including Service, Disability, Old Age, Contributory and Supplementary Pensions, etc.

(2) If the Dependant (or in the case of a child under the age of 17 the person having control over him) is unable to write, he must have his mark duly witnessed by the attestor.

The income is to relate to the same twelve month period as that covered in the pensioner's own declaration (Declaration X), i.e. the twelve month period immediately preceding the date of that declaration. [2130]

#### THE SECOND SCHEDULE

Persons before whom the declarations may be subscribed :—

(a) In any part of the world—

- (1) Officers on the active or half-pay or pension lists of any of His Majesty's Naval, Military or Air Forces.
- (2) Persons receiving salaries of not less than £300 a year as Officers of the Household of His Majesty, or Princes of the Royal Blood, or of Governors or Acting Governors of any part of His Majesty's Dominions.
- (3) Persons in receipt of a salary or allowance of not less than £300 a year from His Majesty's Civil List.
- (4) Persons who are on the active or pension list of the Permanent Civil Service of the Crown who are or were at the date of retirement in receipt of a salary of not less than £300 a year and on a scale rising to not less than £400 a year.
- (5) Managers of branches of British Banks.
- (6) Where none of the above are available, any person specifically authorised by the Treasury.

(b) In the British Empire—

- (7) Magistrates and Justices of the Peace.
- (8) Barristers-at-Law, Advocates, Commissioners for Oaths or duly qualified Solicitors.
- (9) Ministers of Religion. (The denomination and the address of the place of worship to be given on the form of attestation.)



- (10) Physicians Surgeons or Dentists registered as such under the law of the country.
  - (11) Chartered, Incorporated or Certified Accountants.
  - (12) Managers, Secretaries, Chief Cashiers and Accountants of banks registered under the law of the country and other officials of such banks who are authorised by their banks to sign documents on their behalf, and officials of such banks for the time being in charge of branch banks. (The qualification of the official and the name of the bank or branch bank to be given on the form of attestation.)
  - (13) Head Postmasters, Postmasters, Postmistresses and other officers, actually in charge of any Head, Branch or Sub-Post Office, and at Head Post Offices the officer next in command to the Head Postmaster and the Supervising officer in charge of the Public Counter. (The name of the Post Office to be given on the form of attestation.)
  - (14) The following officers of Savings Banks registered under Act of Parliament, viz.: Actuaries, Managers, Directors, Secretaries, Chief Cashiers, Accountants and officials for the time being in charge of branch banks. (The qualification of the official and the name of the bank or branch bank to be given on the form of attestation.)
  - (15) Police Officers not below the rank of Sergeant (rank and force to be given on the form of attestation, and in the case of a Sergeant, his number).
- (c) In the United Kingdom—
- (16) Officers appointed to examine vouchers for non-effective payments in the offices of the Commissioners of Customs and Excise, and Inland Revenue, Postmaster-General, Paymaster-General, the King's and Lord Treasurer's Remembrancer.
  - (17) Head Teachers and pensioned Head Teachers of Schools recognised by the Ministry of Education or the Scottish Education Department. (The name of the school to be given on the form of attestation.)
  - (18) Secretaries of Friendly Societies registered under the Friendly Societies Acts.
  - (19) The employer for the time being of any person entitled to a grant in respect of service in His Majesty's Naval, Military or Air Forces, in respect of such person.
  - (20) Notaries Public.
  - (21) Chief Regional Officers, Deputy-Regional Officers, and officers in charge of whole-time offices of the Ministry of Pensions.
  - (22) Members of War Pensions Committees and of Advisory Committees appointed by the Minister of Pensions.
  - (23) Duly accredited voluntary workers appointed under the War Pensions Acts.
  - (24) The Clerk of any Local Authority and any principal officer of the Local Authority designated by the Authority for the purpose.
- (d) In foreign countries—
- (25) British Diplomatic or Consular Officers empowered by law to administer oaths.
  - (26) Notaries Public and other persons competent by the law of the country to administer such declarations. (The law must be quoted sufficiently for verification.)
  - (27) Ministers of Religion duly licensed by Ecclesiastical Authority in the United Kingdom to officiate as chaplains in the place where they attest. [2131]

### EXPLANATORY NOTE

*(This Note is not part of these Regulations but is intended to indicate their general purport.)*

*The grant of increase of pensions under the Pensions (Increase) Act, 1944, was governed by Regulations made by the Treasury under Section 3 (5) of that Act (S. R. & O., 1944, No. 694 ; 1945, Nos. 449 and 1554).*

*The 1944 Act (as extended by the Expiring Laws Continuance Act, 1945), was due to expire on 31st March, 1947, but provision has now been made by the Pensions (Increase) Act, 1947, for its indefinite continuance. The present Regulations consolidate the Regulations already made under the 1944 Act, with minor amendments, of which the chief are :—*

- (i) *Now that the 1944 Act has been extended indefinitely, provision has been made for obtaining periodical declarations from pensioners at two-yearly intervals, following the practice under the Pensions (Increase) Acts of 1920 and 1924 (Regulation 10 (2)).*
- (ii) *The forms of declaration prescribed in the First Schedule to the Regulations have been somewhat simplified and modified in the light of experience.*

## SUPERANNUATION (PUBLIC OFFICES) RULES AMENDMENT RULE, 1947

S. R. & O., 1947, No. 1026

May 22, 1947

*Note.*—This Rule was made by the Treasury under s. 7 (1) of the Superannuation Act, 1909 (16 Halsbury's Statutes 743), and the Superannuation Act, 1946, Sched. II, paragraph 1 (39 Halsbury's Statutes 729), to give effect to the provisions of the latter.

Rule 1 of the Rules, dated 31st July, 1911, made by the Treasury under Section 7 (1) of the Superannuation Act, 1909, adapting the provisions of the Superannuation Act, 1892, to those of the Superannuation Act, 1909, shall be amended by substituting for the full stop at the end thereof, a comma, and by adding thereto the following proviso :—

“ Provided that, where any person has served in two or more public offices, as so defined, he shall, notwithstanding any intervals between his service in such offices during which he has been transferred to approved employment, as defined in Section 4 of the Superannuation Act, 1914, be treated as having served continuously and successively in those offices.” [2132]

\* \* \* \* \*

### EXPLANATORY NOTE

*(This Note is not part of the Rule, but is intended to indicate its purport.)*

*Section 1 of the Superannuation Act, 1892, and Section 7 of the Superannuation Act, 1909, authorised the Treasury to frame Rules for the grant of superannuation allowances to those who had served continuously and successively in two or more public offices.*

*Paragraph 1 of the Second Schedule to the Superannuation Act, 1946, provides that these Rules may enable anyone who has served in two or more public offices to be treated as having served continuously and successively in those offices (thus preserving his entitlement to superannuation) notwithstanding that there was in fact an interval between two of the periods of service in public offices during which the individual was in employment which was recognised as “ approved employment ” under Section 4 of the Superannuation Act, 1914.*

*The present Rule provides for the amendment of the existing Rules accordingly.*

## PENSIONS (INCREASE) REGULATIONS, 1947

S. R. & O., 1947, No. 1106

June 4, 1947

The Lords Commissioners of His Majesty's Treasury, in pursuance of Their powers under Section 4 of the Pensions (Increase) Act, 1920, and of all

other powers enabling Them in that behalf, hereby make the following Regulations :—

1.—(1) The Interpretation Act, 1889, applies to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

(2) In these Regulations "The Principal Regulations" means the Regulations made by the Treasury under Section 4 of the Pensions (Increase) Act, 1920, on the First day of October, 1924. [2133]

2. The Regulations made by the Treasury under Section 4 of the Pensions (Increase) Act, 1920, on the Twenty-second day of December, 1930, and on the Seventeenth day of March, 1931, are hereby revoked. [2134]

3. For Regulations 2, 5, 7, 8 and 9 of the Principal Regulations there shall be substituted the following Regulations :

"2. The pensioners to whom these Regulations apply are pensioners who, on the Sixteenth day of August, 1920, were in receipt of pensions granted—

Under the Superannuation Acts, 1834 to 1914 ;

Under the Elementary School Teachers (Superannuation) Acts, 1898 to 1912, or under the code of Regulations for Public Elementary Schools, or under the Education (Scotland) Act, 1908 ;

Under the enactments relating to the pay and pensions of the Royal Irish Constabulary ;

and in whose case the following statutory Conditions are fulfilled :—

- (i) the pensioner must have attained the age of 60 years or have retired on account of physical or mental infirmity, or, in the case of a pensioner who is a widow and is in receipt of a pension payable in respect of the services of her deceased husband, must have attained the age of 40 years ;
- (ii) the pensioner must satisfy the Pension Authority that his means, including his pension but excluding any increase granted under the Pensions (Increase) Acts, 1944 and 1947, are less than two hundred pounds a year, if unmarried, or two hundred and seventy-five pounds a year, if married.

For the purposes of the statutory conditions a widower or widow with one or more children under sixteen years of age dependent on him or her will be treated as married, and a widower or widow having no such children will be treated as unmarried.

5.—(i) Every application shall be accompanied by a Declaration by the pensioner in the form of Declaration X set out in the First Schedule to the Increase of Pensions (General) Regulations, 1947, or in a form substantially to the like effect.

Provided that in the case of a second or subsequent application where none of the events mentioned in Regulation 9 hereof has occurred since the pensioner last made a Declaration, the Pension Authority may, at its discretion, accept a Declaration in the form of Declaration Y set out in the First Schedule to the said Regulations of 1947.

(ii) Every Declaration made under these Regulations shall be subscribed before and attested by one of the persons, not being the husband or wife of the person making the Declaration, described in the second Schedule to the said Regulations of 1947.

7. Where in pursuance of an application an increase of pension is granted, the increase shall continue in force until the 31st March next but one following the date as from which the increase is payable, unless in the meantime the pensioner dies or ceases to fulfil the statutory conditions.

Provided that where the first grant of an increase is made on or after the 1st of December, 1946, it shall remain in force until 31st of March, 1949, unless in the meantime the pensioner dies or ceases to fulfil the statutory conditions.

8. An application for the continuance and re-assessment of an increase of pension, accompanied by a like Declaration, shall be sent to the Pension Authority not more than three or less than two months before the expiration of the period for which the current award of increase was granted.

9. The pensioner shall notify the Pension Authority immediately on the occurrence of any of the following events, quoting the number of his Pension Form :—

- (a) the marriage or re-marriage of the pensioner ;
- (b) the death of the wife or husband of the pensioner ;
- (c) the death or the attainment of the age of 16 years of any dependent child under 16 years of age of a widower or widow ;
- (d) any decrease in the income of the pensioner or of the pensioner's wife or husband ;
- (e) the increase of the means (either through earnings or otherwise) of an unmarried pensioner to a rate in excess of £200 per annum, including the addition allowed under the Pensions (Increase) Acts, 1920 and 1924 ;
- (f) the increase of the means of a married pensioner, either through earnings or otherwise (including the means of both husband and wife) to a rate in excess of £275 per annum, including the addition allowed under the Pensions (Increase) Acts, 1920 and 1924 ;
- (g) the obtaining by the pensioner, or by the wife or husband of the pensioner, of fresh paid employment of a regular character. The name and address of the employer shall be notified to the Pension Authority." [2135]

4. After Regulation 15 of the Principal Regulations the following Regulation shall be added

" 16. References in these Regulations to children or to a child shall be construed as including step-children or a step-child and adopted children or an adopted child within the meaning of the Adoption of Children Act, 1926, the Adoption of Children (Northern Ireland) Act, 1929, and the Adoption of Children (Scotland) Act, 1930." [2136]

5. The Schedule to the Principal Regulations shall be omitted. [2137]

6. These Regulations may be cited as the Pensions (Increase) Regulations, 1947, and these Regulations and the Principal Regulations may be cited together as the Pensions (Increase) Regulations, 1924 to 1947. [2138]

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## PENSIONS (INCREASE) (LOCAL AUTHORITIES) REGULATIONS, 1947

*S. R. & O., 1947, No. 1107*

*June 4, 1947*

The Lords Commissioners of His Majesty's Treasury, in pursuance of Their powers under Section 4 of the Pensions (Increase) Act, 1920, and of

all other powers enabling Them in that behalf, hereby make the following Regulations :—

1.—(1) The Interpretation Act, 1889, applies to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

(2) In these Regulations " The Principal Regulations " means the Regulations made by the Treasury under Section 4 of the Pensions (Increase) Act, 1920, on the Ninth day of October, 1924. [2139]

2. The Regulations made by the Treasury under Section 4 of the Pensions (Increase) Act, 1920, on the Tenth day of November, 1931, are hereby revoked. [2140]

3. For Regulations 2, 5, 7, 8 and 14 of the Principal Regulations there shall be substituted the following Regulations :

" 2. The Pensioners to whom these Regulations apply are pensioners who on the Sixteenth day of August, 1920, were in receipt of pensions granted by Local or other Public Authorities (with the exception of Police Authorities) in Great Britain, and to whom the provisions of the Pensions (Increase) Acts, 1920 and 1924 (hereinafter referred to as " the Acts " ), have been applied or may hereafter be applied by Order under Section 3 of the Act of 1920, and in whose case the following Statutory Conditions are fulfilled :—

- (i) the pensioner must have attained the age of 60 years or have retired on account of physical or mental infirmity, or, in the case of a pensioner who is a widow and is in receipt of a pension payable in respect of the services of her deceased husband, must have attained the age of 40 years ;
- (ii) the pensioner must satisfy the Pension Authority that his means, including his pension but excluding any increase granted under the Pensions (Increase) Acts, 1944 and 1947, are less than two hundred pounds a year, if unmarried, or two hundred and seventy-five pounds a year, if married.

For the purposes of the Statutory Conditions a widower or widow with one or more children under sixteen years of age dependent on him or her will be treated as married, and a widower or widow having no such children will be treated as unmarried.

5.—(i) Every application shall be accompanied by a Declaration by the pensioner in the form of Declaration X set out in the First Schedule to the Increase of Pensions (General) Regulations, 1947, or in a form substantially to the like effect.

Provided that in the case of a second or subsequent application where none of the events mentioned in Regulation 14 hereof has occurred since the pensioner last made a Declaration, the Pension Authority may, at its discretion, accept a Declaration in the form of Declaration Y set out in the First Schedule to the said Regulations of 1947.

(ii) Every Declaration made under these Regulations shall be subscribed before and attested by one of the persons, not being the husband or wife of the person making the Declaration, described in the Second Schedule to the said Regulations of 1947.

7. Where in pursuance of an application an increase of pension is granted, the increase shall continue in force until the expiration of twenty-four months from the date as from which the increase is payable unless in the meantime the pensioner dies or ceases to fulfil the Statutory Conditions.

Provided that in the case of a first application the increase may, if the Pension Authority think fit and subject to the provisions of the

Acts, continue in force until the end of the complete financial year next but one following the said date.

8. An application for the continuance or reassessment of any increase of pension, accompanied by a like Declaration, shall be sent to the Pension Authority not more than three nor less than two months before the expiration of the first period for which the increase is granted and of every subsequent period of twenty-four months.

14. The pensioner shall notify the Pension Authority immediately on the occurrence of any of the following events :—

- (a) the marriage or re-marriage of the pensioner ;
- (b) the death of the wife or husband of the pensioner ;
- (c) the death or the attainment of the age of 16 years of any dependent child under 16 years of age of a widower or widow ;
- (d) any decrease in the income of the pensioner or of the pensioner's wife or husband ;
- (e) the increase of the means (either through earnings or otherwise) of an unmarried pensioner to a rate in excess of £200 per annum, including the addition allowed under the Acts ;
- (f) the increase of the means of a married pensioner, either through earnings or otherwise (including the means of both husband and wife) to a rate in excess of £275 per annum, including the addition allowed under the Acts ;
- (g) the obtaining by the pensioner or the wife or husband of the pensioner of fresh paid employment of a regular character. The name and address of the employer shall be notified to the Pension Authority." [2141]

4. After Regulation 15 of the Principal Regulations the following Regulations shall be added :—

" 16. References in these Regulations to children or to a child shall be construed as including step-children or a step-child and adopted children or an adopted child within the meaning of the Adoption of Children Act, 1926, the Adoption of Children (Northern Ireland) Act, 1929, and the Adoption of Children (Scotland) Act, 1930." [2142]

5. Appendix I and Appendix II to the Principal Regulations shall be omitted. [2143]

6. These Regulations may be cited as the Pensions (Increase) (Local Authorities) Regulations, 1947, and these Regulations and the Principal Regulations may be cited together as the Pensions (Increase) (Local Authorities) Regulations, 1924 to 1947. [2144]

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## PENSIONS (INCREASE) (POLICE) REGULATIONS, 1947

*S. R. & O., 1947, No. 1108*

*June 4, 1947*

The Lord Commissioners of His Majesty's Treasury, in pursuance of Their powers under Section 4 of the Pensions (Increase) Act, 1920, and of all other powers enabling Them in that behalf, hereby make the following Regulations :—

1.—(1) The Interpretation Act, 1889, applies to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

(2) In these Regulations "The Principal Regulations" means the Regulations made by the Treasury under Section 4 of the Pensions (Increase) Act, 1920, on the Eighteenth day of November, 1924. [2145]

2. The Regulations made by the Treasury under Section 4 of the Pensions (Increase) Act, 1920, on the 16th day of November, 1931, are hereby revoked. [2146]

3. For Regulations 2, 6, 7, 9 and 10 of the Principal Regulations there shall be substituted the following Regulations :

"2. The pensioners to whom these Regulations apply are pensioners who, on the 16th day of August, 1920, were in receipt of pensions granted—

Under the Metropolitan Police Acts, 1829 to 1909 ;

Under the Police Acts, 1889 to 1910 ;

Under the Police (Scotland) Act, 1890, and the Police (Scotland) Act (1890) Amendment Act, 1910 ;

Under the City of London Police Act, 1839, the City of London Police Act, 1874, and the City of London Police (Superannuation) Acts, 1889 and 1894 ;

Under the Special Constables Act, 1914 ;

Under the Police (Naval and Military Service) Acts, 1914 and 1915 ;

and in whose case the following statutory Conditions are fulfilled :—

- (i) the pensioner must have attained the age of 60 years or have retired on account of physical or mental infirmity, or, in the case of a pensioner who is a widow and is in receipt of a pension payable in respect of the services of her deceased husband, must have attained the age of 40 years ;
- (ii) the pensioner must satisfy the Pension Authority that his means, including his pension but excluding any increase granted under the Pensions (Increase) Acts, 1944 and 1947, are less than two hundred pounds a year, if unmarried, or two hundred and seventy-five pounds a year, if married.

For the purpose of the statutory conditions—

- (a) in the case of a pensioner who is married his means shall be deemed to include the means of both husband and wife ;
- (b) a widower or widow with one or more children under 16 years of age dependent on him or her shall be treated as married, and a widower or widow having no such children shall be treated as unmarried.

6. Subject to the provisions of Regulation 9 of these Regulations an application for the continuance or reassessment of an increase of pension shall be made after 1st January and before 1st February in the year in which the said increase, if not renewed, ceases to be payable.

7.—(i) Every application shall be accompanied by a Declaration by the pensioner in the form of Declaration X set out in the First Schedule to the Increase of Pensions (General) Regulations, 1947, or in a form substantially to the like effect.

Provided that in the case of a second or subsequent application where none of the events mentioned in Regulation 10 hereof has occurred since the pensioner last made a Declaration, the Pension Authority may, at its discretion, accept a Declaration in the form of Declaration Y set out in the First Schedule to the said Regulations of 1947.

(ii) Every Declaration made under these Regulations shall be subscribed before and attested by one of the persons, not being the husband or wife of the person making the Declaration, described in the Second Schedule to the said Regulations of 1947.



9. Subject to the provisions of the Acts, the first grant of any increase of pension shall be payable as from the date when the statutory conditions were fulfilled, and any subsequent grant shall be payable as from 1st April; and the grant shall continue until 31st March next but one following, unless in the meantime the pensioner dies or ceases to fulfil the statutory conditions. Provided that where the Pension Authority are satisfied that there has been a material reduction in the income of a pensioner during the currency of a grant and that such reduction is likely to be permanent, they shall re-assess the grant accordingly. Before re-assessing the grant the Pension Authority may require the pensioner to make a fresh application on the prescribed form.

10. The pensioner shall notify the Pension Authority immediately on the occurrence of any of the following events, quoting his Pension Number :—

- (a) the marriage or re-marriage of the pensioner ;
- (b) the death of the wife or husband of the pensioner ;
- (c) the death or the attainment of the age of 16 years of any dependent child under 16 years of age of a widower or widow ;
- (d) any decrease in the income of the pensioner or of the pensioner's wife or husband ;
- (e) any increase in the income of the pensioner or the pensioner's wife or husband from any source, including earnings from paid employment of a regular character, by which
  - (i) if the pensioner is unmarried, his total means are increased to a rate in excess of £200 a year, or
  - (ii) if the pensioner is married, the total means of both husband and wife are increased to a rate in excess of £275 a year,

the means to be reckoned in each case as including any increase of pension granted under the Pensions (Increase) Acts, 1920 and 1924."

[2147]

4. After Regulation 15 of the Principal Regulations the following Regulation shall be added

" 16. References in these Regulations to children or to a child shall be construed as including step-children or a step-child and adopted children or an adopted child within the meaning of the Adoption of Children Act, 1926, the Adoption of Children (Northern Ireland) Act, 1929, and the Adoption of Children (Scotland) Act, 1930." [2148]

5. The Schedule to the Principal Regulations shall be omitted. [2149]

6. These Regulations may be cited as the Pensions (Increase) (Police) Regulations, 1947, and these Regulations and the Principal Regulations may be cited together as the Pensions (Increase) (Police) Regulations, 1924 to 1947. [2150]

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## NATIONAL INSURANCE (MODIFICATION OF LOCAL GOVERNMENT SUPERANNUATION SCHEMES) REGULATIONS, 1947

*S. R. & O., 1947, No. 1245*

*June 19, 1947*

Whereas the Treasury has determined under subsection (4) of section 69 of the National Insurance Act, 1946, that the Minister of Health is the appro-

priate Minister to make regulations under that subsection for modifying or winding up the schemes for the provision of pensions or other benefits established by or under the Asylums Officers' Superannuation Act, 1909 (so far as relates to England and Wales), as amended by the Asylum and Certified Institutions (Officers Pensions) Act, 1918, the Local Government Superannuation Act, 1937, and any local Act respectively :

Now therefore the Minister of Health, in exercise of the powers conferred on him by the said subsection, and of all other powers enabling him in that behalf, hereby makes the following regulations :—

1.—(1) These regulations may be cited as the National Insurance (Modification of Local Government Superannuation Schemes) Regulations, 1947, and shall come into operation on the first day of September, 1947.

(2) The Interpretation Act, 1889, applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

(3) In these regulations, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them—

“ the Act ” means the National Insurance Act, 1946 ;

“ the Act of 1909 ” means the Asylums Officers' Superannuation Act, 1909, as amended by the Asylums and Certified Institutions (Officers Pensions) Act, 1918 ;

“ the Act of 1937 ” means the Local Government Superannuation Act, 1937, or that Act as applied by or by virtue of any other enactment or as extended or modified by regulations made by the Minister of Health under subsection (1) of section 67 of the National Health Service Act, 1946 ;

“ contributory employee ”, “ contributing service ”, “ non-contributing service ”, “ employing authority ”, “ local Act authority ”, “ local Act contributor ”, “ local Act scheme ” and “ local authority ” have the same meanings respectively as they have in the Act of 1937 ;

“ established officer or servant ” and “ established officer or servant of the first class ” have the same meanings respectively as they have in the Act of 1909 ;

“ existing scheme ” means a scheme made pursuant to subsection (3) of section 28 of the Widows', Orphans' and Old Age Contributory Pensions Act, 1936, as amended by the Act of 1937 ;

“ insured person ” means, until the appointed day for the purposes of section 1 of the Act, a person insured or deemed to be insured under the National Health Insurance Acts or the Widows', Orphans' and Old Age Contributory Pensions Act, 1936, and on and after that day means an insured person within the meaning of the Act ;

“ the material date ” means the first day of September, 1947, or in the case of a person who became an insured person after that date, the date on which he became an insured person ;

“ the Minister ” means the Minister of Health ;

“ The National Health Insurance Acts ” means the National Health Insurance Acts, 1936 to 1938, as amended by the National Health Insurance Contributory Pensions and Workmen's Compensation Act, 1941 ;

“ national service ” means service in the armed forces of the Crown by a person called up therefor under the provisions of the National Service Acts, 1939–1946, as amended by any subsequent enactment, or work of a civil character and under civilian control undertaken or training undergone by a person as a condition of his not being registered as a person liable to be called up for service under those provisions ; and

“ war service ” has the same meaning as in the Local Government Staffs (War Service) Act, 1939. [2151]

2. As from the first day of September, 1947, the modifications contained in any existing scheme modifying the Act of 1937 shall cease to be operative. [2152]

3. Subject to the provisions of these regulations, the Act of 1937, any local Act scheme and the Act of 1909 shall as from the material date have effect subject to the modifications contained in regulation 4 in relation to an insured person who is a contributory employee, local Act contributor or established officer or servant, and subject to the modifications contained in regulation 5 in relation to a person who, having been such a person as aforesaid becomes entitled to a superannuation allowance under the Act of 1937, a local Act scheme or the Act of 1909 on or after the material date. [2153]

4. The amount of the contributions payable under the relevant enactment or scheme by a person to whom this regulation applies shall be reduced, in the case of an established officer or servant of the first class, at the rate of one pound, one shilling and eightpence per annum if such officer or servant is a man and at the rate of one pound and six shillings per annum if such officer or servant is a woman, and in any other case, at the rate of three pounds and eightpence per annum if the person is a man or a female nurse, midwife or health visitor and at the rate of three pounds and five shillings per annum if the person is a female other than a female nurse, midwife or health visitor, and the amount of the contributions payable in respect of any such person who is a contributory employee or local Act contributor by the employing authority or local Act authority, as the case may be, shall be reduced at the like rate. [2154]

5. As from the date on which a person to whom this regulation applies becomes entitled to a superannuation allowance under the relevant enactment or scheme, or if on becoming entitled to such an allowance as aforesaid he has not reached pensionable age within the meaning of the Act, as from the date on which he reaches that age, the allowance shall be reduced—

(i) in the case of a person who was a contributory employee, local Act contributor or established officer or servant immediately before the material date, and remained a contributory employee, local Act contributor or established officer or servant until becoming entitled to the superannuation allowance without any break of more than twelve months—

(i) by the annual sum shown in the relative Table set out in the first schedule to these regulations, in relation to an age which corresponds with that of the person on the material date, for each year of contributing service or service reckonable for the purposes of the local Act scheme or the Act of 1909, as the case may be, on and after the material date and, if immediately before the material date he was subject to an existing scheme, by the like sum for each year of contributing service or service reckonable as aforesaid, in respect of which he paid reduced contributions in pursuance of that scheme; and

(ii) by one-half of the said annual sum for each year of non-contributing service on and after the material date;

(ii) in the case of an established officer or servant of the first class to whom the last preceding paragraph does not apply, by the sum of two pounds and sixpence per annum for each year of service reckonable for the purposes of the Act of 1909 on and after the material date;

(iii) in any other case—

- (i) by the sum of one pound and fourteen shillings per annum for each year of contributing service or service reckonable for the purposes of the local Act scheme or the Act of 1909, as the case may be, on and after the material date and, if immediately before the material date he was subject to an existing scheme, by the like sum for each year of contributing service or service reckonable as aforesaid, in respect of which he paid reduced contributions in pursuance of that scheme ; and
- (ii) by the sum of seventeen shillings per annum for each year of non-contributing service on and after the material date :

Provided that—

- (a) for the purposes of items (i) of sub-paragraphs\* (i) and (iii) of this paragraph respectively, if the service of a local Act contributor after the material date, after the deduction of all completed years of such service, includes a fraction of a year, and if in the calculation of superannuation allowances under the local Act scheme account is taken of fractions of a year, the superannuation allowance of such local Act contributor shall also be reduced by a proportionate sum in respect of that fraction of a year ;
- (b) such a person as is mentioned in sub-paragraph (i) of this regulation shall not be treated as having had such a break as is mentioned in that sub-paragraph, if at any time he ceased to be a contributory employee, local Act contributor or established officer or servant in order to undertake war service, but re-entered employment in one of those capacities within twelve months after the termination of that service ;
- (c) where a contributory employee, in consequence of a resolution passed by his employing authority under proviso (i) to section 8 (2) (b) of the Act of 1937 or by virtue of having made payments under proviso (ii) to section 8 (2) (b) of that Act, is entitled to a superannuation allowance in respect of any year of non-contributing service after the material date on a higher scale than that mentioned in sub-paragraph (b) of section 8 (2) of that Act, whether as originally enacted or as modified by any local Act, the annual sum by which his superannuation allowance is to be reduced in respect of that year shall be increased proportionately ;
- (d) if a person, having paid reduced contributions for any period in pursuance of a scheme made under section 28 (3) of the Widows', Orphans' and Old Age Contributory Pensions Act, 1936, or the corresponding provisions of any Act repealed by that Act, had, in pursuance of that scheme, paid a sum representing the difference between those contributions and the sum he would have contributed had those contributions not been reduced, his service during that period shall not be treated as service in respect of which reduced contributions were paid ; and
- (e) the total amount of the reduction shall in no case exceed sixty-seven pounds and fifteen shillings per annum. [2155]

6. If a person to whom regulation 3 applies would, if he ceased to be employed, be entitled to a superannuation allowance, and if, being a contributory employee, local Act contributor or established officer or servant of the second class, he has completed forty years contributing service or forty years contributing service and non-contributing service, the non-contributing service being reckoned at half its actual length, or forty years service, as the case may be, or, being an established officer or servant of the first class, has

completed thirty-four years service, any further service shall be disregarded for the purposes of regulation 5. [2156]

7. Regulation 3 shall not apply in the case of any person who in pursuance of the provisions of section 71 (3) (a) of the Act is deemed to attain pensionable age on the expiration of ten years from the appointed day for the purposes of those provisions. [2157]

8.—(1) Where an insured person in the part-time employment of two or more local authorities is a contributory employee or local Act contributor in each employment, regulation 3 shall only apply in relation to him in his employment under the local authority which is treated as his employer for the purposes of the Act.

(2) Where a person to whom regulation 3 applies as a contributory employee or local Act contributor in the part-time employment of one or more local authorities is also employed in other employment in which he is not a contributory employee or local Act contributor, and his employer in that other employment is treated as his employer for the purposes of the Act, regulation 3 shall not apply, and in the event of his subsequently becoming a person to whom that regulation applies, no account shall be taken for the purposes of regulation 5 of his service during the period in which this paragraph applied to him. [2158]

9. Where a person becomes a contributory employee or local Act contributor within twelve months after leaving employment in relation to which he was entitled to participate in superannuation benefits provided by regulations made by the Minister of Health under section 67 (1) of the National Health Service Act, 1946, having left that employment on or after the appointed day for the purposes of section 1 of the Act, or if he left that employment on or after that date in order to undertake national service, within six months after the termination of that service, then, so long as he is a contributory employee or local Act contributor without any break of more than twelve months, regulation 3 shall not apply, and the Act of 1937 or the local Act scheme shall apply in relation to him, subject, as nearly as may be, to the like modifications (if any) as, by virtue of his having been an insured person, were applicable in relation to him as a person entitled to participate in superannuation benefits provided by the said regulations, excluding any modifications that were applicable to him solely by virtue of his having been a person of a special class, unless he is a person of that class on becoming a contributory employee, or local Act contributor as aforesaid :

Provided that a person to whom this regulation applies shall not be treated as having had such a break as aforesaid, if at any time he ceases to be a contributory employee or local Act contributor in order to undertake war service, but re-enters employment in one of those capacities within twelve months after the termination of that service. [2159]

10. Regulation 3 shall not apply to a person who is a contributory employee, local Act contributor or established officer or servant on the first day of September, 1947, or who becomes such a person on or before the appointed day for the purposes of section 1 of the Act, so long as he remains a contributory employee, local Act contributor or established officer or servant without any break of more than twelve months, unless he gives notice in writing to his employer within three months after the material date, or if he is not a contributory employee, local Act contributor or established officer or servant on that date, within three months after the date on which he again becomes a person employed in any of those capacities, that he wishes those provisions to apply in his case, and in the event of his giving such notice as aforesaid, those provisions shall apply in relation to him as from the first day of the month or, in the case of a person in receipt of weekly remuneration, the first

day of the week, next following the month or week, as the case may be, in which the notice is given, as if that date were the material date :

Provided that a person shall not be treated as having had such a break as aforesaid if at any time he ceases to be a contributory employee, local Act contributor or established officer or servant in order to undertake war service, but re-enters employment in one of those capacities within twelve months after the termination of that service. [2160]

11. If a contributory employee in relation to whom an existing scheme was in force immediately before the first day of September, 1947, does not give notice to his employing authority under the last preceding regulation, the Act of 1937 shall, so long as he remains a contributory employee in the employment of that authority, continue to apply in his case, subject to the like modifications as were applicable in relation to him by virtue of the existing scheme. [2161]

12. For the purposes of sub-paragraph (i) of regulation 5, and of regulation 10, a person engaged in war service immediately before the material date shall be deemed to have been a contributory employee, local Act contributor or established officer or servant immediately before that date if he undertook that service on ceasing to be employed in any of those capacities and re-entered employment in one of those capacities within twelve months after the termination of that service, and, if any existing scheme was in force in relation to him immediately before his undertaking war service on ceasing to be employed as aforesaid, then, for the purposes of regulation 11 that scheme shall be deemed to have been in force in relation to him immediately before the first day of September, 1947. [2162]

13. If in respect of any period a contributory employee or local Act contributor pays no contributions under the Act of 1937 or the local Act scheme by reason of the fact that the amount of the reduction in his contributions provided for by these regulations equals or exceeds the amount of his contributions, he shall nevertheless be deemed for the purposes of section 12 (1) (a) of the Act of 1937 and any corresponding provision of the local Act scheme to have made the contributions required by that Act or scheme in respect of that period. [2163]

14.—(1) Any sum payable in accordance with regulations made by the Minister of Health under proviso (ii) to section 8 (2) (b) of the Act of 1937 by a contributory employee to whom regulation 4 applies, in respect of a period of non-contributing service of which account may be taken under regulation 5 in calculating the amount of the reduction of any superannuation allowance to which that employee may become entitled under the Act of 1937, shall be reduced by the sum shown in the appropriate column of the Table set out in the Second Schedule to these regulations, in relation to an age which corresponds with that of the employee on the date on which those regulations first became applicable in relation to him, in respect of each one pound of the amount of the reduction of the superannuation allowance as aforesaid in respect of that period of service, and by a proportionate sum in respect of any fraction of a pound included in the said amount.

(2) If a local Act contributor to whom regulation 3 applies becomes liable in accordance with the provisions of the local Act scheme to pay a sum to the superannuation fund maintained by the local Act authority as a condition of being entitled to reckon any period of previous employment as a period of service for any of the purposes of the local Act scheme, and under regulation 5 account may be taken of any service included in that period in calculating the amount of the reduction of any superannuation allowance to which that contributor may become entitled under the local Act scheme, such sum shall be reduced in manner provided by paragraph (1) of this regulation in relation to a sum payable by a contributory employee.

(3) If a local Act contributor to whom regulation 4 applies becomes subject to a liability to make payments by way of a contribution of a percentage of his emoluments additional to the percentage payable in respect of current service as a condition of being entitled to reckon any period of previous employment as a period of service for any of the purposes of the local Act scheme, and under regulation 5 account may be taken of any service included in that period in the manner referred to in the last preceding paragraph, such payments shall be reduced in such manner as an actuary shall certify to be necessary in order to secure, as nearly as may be, a similar proportionate reduction in the amount of these payments to that provided for by the last preceding paragraph in relation to a sum payable by a person to whom that paragraph applies. [2164]

15. If a person, being a contributory employee or local Act contributor to whom regulation 3 applies ceases to be employed as such, but again becomes a contributory employee or local Act contributor in such circumstances that a transfer value becomes payable in respect of him under any provision of the Act of 1937, the amount of the transfer value shall be reduced by the sum shown in the appropriate column of the Table set out in the second schedule to these regulations in relation to an age which corresponds with that of the person at the date on which he ceased to be employed as aforesaid in respect to these regulations in relation to an age which corresponds with that of the person at the date on which he ceased to be employed as aforesaid in respect of each one pound of the amount by which any superannuation allowance to which he may become entitled under the Act of 1937 or the local Act scheme may be reduced under regulation 5 in respect of any service of which account is taken in the calculation of the transfer value, and by a proportionate sum in respect of any fraction of a pound included in the said amount. [2165]

### FIRST SCHEDULE

TABLE I

#### *Male Officers*

Age	Annual Sum	
	Established officers or servants of the first class	Other officers
Under 20 ..	£ s. d. 2 0 6	£ s. d. 1 14 0
20 and under 21	2 0 6	1 14 0
21 " " 22	1 17 6	1 13 0
22 " " 23	1 15 0	1 12 6
23 " " 24	1 13 0	1 12 0
24 " " 25	1 11 0	1 11 0
25 " " 26	1 9 6	1 10 6
26 " " 27	1 8 0	1 10 0
27 " " 28	1 7 0	1 9 6
28 " " 29	1 6 0	1 9 0
29 " " 30	1 5 0	1 8 6
30 " " 31	1 4 6	1 8 0
31 " " 32	1 3 6	1 7 6
32 " " 33	1 3 0	1 7 0
33 " " 34	1 2 6	1 6 0
34 " " 35	1 2 6	1 5 6



TABLE I—*continued*  
*Male Officers—continued*

Age	Annual Sum	
	Established officers or servants of the first class	Other officers
	£ s. d.	£ s. d.
35 and under 36	1 2 0	1 5 0
36 " " 37	1 2 0	1 4 6
37 " " 38	1 1 6	1 4 0
38 " " 39	1 1 0	1 3 6
39 " " 40	1 0 6	1 3 0
40 " " 41	1 0 0	1 2 6
41 " " 42	1 0 0	1 2 0
42 " " 43	19 6	1 1 6
43 " " 44	19 0	1 1 0
44 " " 45	18 6	1 0 6
45 " " 46	18 6	1 0 0
46 " " 47	18 0	19 6
47 " " 48	18 0	19 0
48 " " 49	17 6	18 6
49 " " 50	17 6	18 0
50 " " 51	17 0	17 6
51 " " 52	17 0	17 0
52 " " 53	17 0	17 0
53 " " 54	17 0	16 6
54 " " 55	17 0	16 0
55 and over ..	17 0	15 6

TABLE II  
*Female Officers*

Age	Annual Sum		
	Established officers or servants of the first class	Female nurses, midwives, and health visitors	Other officers
	£ s. d.	£ s. d.	£ s. d.
Under 20 ..	2 0 6	1 14 0	1 14 0
20 and under 21	2 0 6	1 14 0	1 14 0
21 " " 22	1 12 0	1 11 0	1 11 6
22 " " 23	1 6 6	1 8 0	1 9 6
23 " " 24	1 2 6	1 5 6	1 7 6
24 " " 25	19 6	1 3 0	1 5 6
25 " " 26	17 0	1 1 0	1 4 0
26 " " 27	15 0	19 6	1 2 6
27 " " 28	13 6	18 0	1 1 0
28 " " 29	12 6	17 0	1 0 0
29 " " 30	11 6	16 0	19 0

TABLE II—continued  
Female Officers—continued

Age	Annual sum		
	Established officers or servants of the first class	Female nurses, midwives, and health visitors	Other officers
	£ s. d.	£ s. d.	£ s. d.
30 and under 31	11 0	15 6	18 0
31 „ „ 32	10 6	15 0	17 6
32 „ „ 33	10 0	14 6	17 0
33 „ „ 34	9 6	14 0	16 6
34 „ „ 35	9 0	13 6	16 0
35 „ „ 36	8 6	13 0	15 6
36 „ „ 37	8 6	13 0	15 0
37 „ „ 38	8 0	12 6	14 6
38 „ „ 39	8 0	12 6	14 0
39 „ „ 40	7 6	12 6	13 6
40 „ „ 41	7 6	12 0	13 6
41 „ „ 42	7 0	12 0	13 0
42 „ „ 43	7 0	12 0	13 0
43 „ „ 44	7 0	11 6	12 6
44 „ „ 45	6 6	11 6	12 6
45 „ „ 46	6 6	11 0	12 0
46 „ „ 47	6 0	11 0	12 0
47 „ „ 48	6 0	11 0	12 0
48 „ „ 49	6 0	11 0	11 6
49 „ „ 50	6 0	11 0	11 6
50 and over ..	6 0	11 0	11 0

[2166]

## SECOND SCHEDULE

Age	Male officers or servants	Female officers or servants (other than those mentioned in col. (4))	Female nurses, midwives and health visitors in whose case the age of compulsory retirement is 60 years
	£ s. d.	£ s. d.	£ s. d.
Under 20 ..	2 0 0	1 0 0	15 0
20 and under 21	2 1 0	1 2 0	17 0
21 „ „ 22	2 3 0	1 4 0	19 0
22 „ „ 23	2 5 0	1 7 0	1 2 0
23 „ „ 24	2 6 0	1 10 0	1 5 0
24 „ „ 25	2 8 0	1 13 0	1 9 0
25 „ „ 26	2 10 0	1 17 0	1 14 0
26 „ „ 27	2 12 0	2 2 0	2 1 0
27 „ „ 28	2 14 0	2 8 0	2 9 0
28 „ „ 29	2 16 0	2 15 0	2 17 0

SECOND SCHEDULE—*continued*

Age	Male officers or servants	Female officers or servants (other than those mentioned in col. (4))	Female nurses, midwives and health visitors in whose case the age of compulsory retirement is 60 years
	£ s. d.	£ s. d.	£ s. d.
29 and under 30	2 18 0	3 2 0	3 6 0
30 " " 31	3 0 0	3 9 0	3 17 0
31 " " 32	3 2 0	3 17 0	4 8 0
32 " " 33	3 4 0	4 5 0	4 19 0
33 " " 34	3 6 0	4 12 0	5 9 0
34 " " 35	3 9 0	5 0 0	5 19 0
35 " " 36	3 11 0	5 8 0	6 8 0
36 " " 37	3 13 0	5 15 0	6 15 0
37 " " 38	3 15 0	6 3 0	7 1 0
38 " " 39	3 17 0	6 11 0	7 7 0
39 " " 40	4 0 0	6 18 0	7 12 0
40 " " 41	4 2 0	7 5 0	7 17 0
41 " " 42	4 4 0	7 13 0	8 2 0
42 " " 43	4 7 0	8 0 0	8 6 0
43 " " 44	4 10 0	8 7 0	8 11 0
44 " " 45	4 13 0	8 13 0	8 16 0
45 " " 46	4 16 0	8 19 0	9 1 0
46 " " 47	4 19 0	9 5 0	9 6 0
47 " " 48	5 2 0	9 11 0	9 12 0
48 " " 49	5 5 0	9 17 0	9 18 0
49 " " 50	5 9 0	10 4 0	10 4 0
50 " " 51	5 13 0	10 11 0	10 10 0
51 " " 52	5 17 0	10 18 0	10 16 0
52 " " 53	6 1 0	11 5 0	11 2 0
53 " " 54	6 5 0	11 12 0	11 9 0
54 " " 55	6 10 0	12 0 0	11 16 0
55 " " 56	6 15 0	12 8 0	12 4 0
56 " " 57	7 0 0	12 16 0	12 13 0
57 " " 58	7 6 0	13 5 0	13 2 0
58 " " 59	7 12 0	13 14 0	13 12 0
59 " " 60	7 18 0	14 3 0	14 2 0
60 " " 61	8 4 0		
61 " " 62	8 11 0		
62 " " 63	8 19 0		
63 " " 64	9 8 0		
64 " " 65	9 17 0		

[2167]

## EXPLANATORY NOTE

(This Note is not part of the Regulations but is intended to indicate their general purport.)

These regulations modify the Local Government Superannuation Act, 1937, the Asylums Officers' Superannuation Act, 1909, as amended by the Asylums and Certified Institutions (Officers' Pensions) Act, 1918, and superannuation schemes administered by local authorities under local Acts, by providing, subject to specified conditions, limitations and exceptions, for the reduction of the contributions payable thereunder by employees of local authorities who are insured persons, and for the reduction of superannuation allowances becoming

*payable thereunder to such employees by specified amounts according to the circumstances, not in any case exceeding £67 15s. 0d. per annum.*

## NATIONAL INSURANCE (MODIFICATION OF LOCAL GOVERNMENT SUPERANNUATION SCHEMES) AMENDMENT REGULATIONS, 1947

*S. R. & O., 1947, No. 1675*

*August 4, 1947*

The Minister of Health, in exercise of his powers under subsection (4) of section 69 of the National Insurance Act, 1946, and of all other powers enabling him in that behalf, hereby makes the following regulations :—

1.—(1) These regulations may be cited as the National Insurance (Modification of Local Government Superannuation Schemes) Amendment Regulations, 1947, and these regulations and the National Insurance (Modification of Local Government Superannuation Schemes) Regulations, 1947 (hereinafter called “ the principal regulations ”), shall be construed together.

(2) The Interpretation Act, 1889, applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

(3) These regulations shall come into operation on the first day of September, 1947. [2168]

2. The principal regulations shall be amended in manner following, that is to say :—

(a) In regulation 1, for the definition of “ the material date ” there shall be substituted the following definition :—“ the material date ”, in relation to an insured person who is a contributory employee, local Act contributor or established officer or servant on the first day of September, 1947, means that day, and in relation to a person who on that day is a contributory employee, local Act contributor or established officer or servant but not an insured person, or who becomes a contributory employee, local Act contributor or established officer or servant after that day, means the date on which he is first an insured person in one of those capacities ;”

(b) In the second line of sub-paragraph (i) of regulation 5, the words “ within twelve months ” shall be substituted for the word “ immediately ” ;

(c) In items (i) and (ii) of sub-paragraphs (i) and (iii) of regulation 5 and in proviso (c) to regulation 5 there shall be inserted after the words “ after the material date ”, wherever those words occur, the words “ or the appointed day for the purposes of section 1 of the Act, whichever is the earlier,” ;

(d) In regulation 10, the words “ or who, having ceased to be such a person before the first day of September, 1947, again becomes such a person within twelve months after having so ceased ” shall be inserted after the words “ section 1 of the Act ” and the words “ or if he is not a contributory employee ” down to and including the words “ in any of those capacities ” shall be deleted ;

(e) The following regulation shall be substituted for regulation 12—

“ 12.—(1) For the purposes of sub-paragraph (i) of regulation 5, a person engaged in war service within twelve months

before the material date shall be deemed to have been a contributory employee, local Act contributor or established officer or servant within twelve months before that date if he undertook that service on ceasing to be employed in any of those capacities.

(2) For the purposes of regulation 10, a person engaged in war service on the first day of September, 1947, shall be deemed to have been a contributory employee, local Act contributor or established officer or servant during the period of that service if he undertook that service on ceasing to be employed in any of those capacities and re-entered employment in one of those capacities within twelve months after the termination of that service :

Provided that nothing in this paragraph shall affect the construction of the term " material date " as used in regulation 10 in relation to such a person as aforesaid.

(3) For the purposes of regulation 11, where a person engaged in war service immediately before the first day of September, 1947, was a contributory employee in relation to whom an existing scheme was in force immediately before his undertaking that service, then, if he again becomes a contributory employee in the employment of the same employing authority on the termination of that service, the existing scheme shall be deemed to have been in force in relation to him immediately before the first day of September, 1947, and he shall be deemed to have remained a contributory employee in the employment of that authority during the period of his war service " ;

- (f) In regulation 14 (2) there shall be inserted after the words " the purposes of the local Act scheme," the words " not being a sum payable in respect of contributions returned to him on his ceasing to hold such previous employment " ; and
- (g) In the First Schedule, the headings to Table I and Table II and the headings to column 3 in Table I and column 4 in Table II shall be read as including references to servants as well as officers. [2169]

\* \* \* \* \*

### EXPLANATORY NOTE

*(This Note is not part of the Regulations, but is intended to indicate their general purport.)*

*These regulations amend the National Insurance (Modification of Local Government Superannuation Schemes) Regulations, 1947. A new definition of the term " material date " is substituted in the original regulations and consequential amendments are made in regulations 5 and 10. It was doubtful whether all the insured persons who might become superannuable employees of local authorities between 1st September, 1947, and 6th July, 1948, would have been able under the original regulations to obtain the benefit of the modifications made by the regulations in the enactments or schemes to which they so became subject. It was intended that they should enjoy this benefit if they so desired, and the amendments now made are designed to that end. A new provision is substituted for regulation 12 to safeguard the position of superannuable employees of local authorities who are on war service in the light of the amendments made in relation to employees not on war service.*

# NATIONAL HEALTH SERVICE (SUPERANNUATION) REGULATIONS, 1947

*S. R. & O., 1947, No. 1755*

*August 12, 1947*

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### PART I

PROVISIONS RELATING TO OFFICERS EMPLOYED BY BODIES CONSTITUTED UNDER THE ACT AND OTHER OFFICERS ENGAGED IN HEALTH SERVICES OTHERWISE THAN IN THE EMPLOYMENT OF LOCAL HEALTH AUTHORITIES OR OTHER LOCAL AUTHORITIES

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The Minister of Health, in exercise of the powers conferred on him by subsection (1) of section 67 of the National Health Service Act, 1946, hereby makes the following regulations in the terms of a draft duly approved by resolution of each House of Parliament :—

*Citation and Interpretation*

1.—(1) These regulations may be cited as the National Health Service (Superannuation) Regulations, 1947.

(2) The Interpretation Act, 1889, applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

(3) In these regulations, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them—

“ the Act ” means the National Health Service Act, 1946 ;

“ the Act of 1909 ” means the Asylums Officers' Superannuation Act, 1909, as amended by the Asylums and Certified Institutions (Officers Pensions) Act, 1918 ;

“ the Act of 1922 ” means the Local Government and other Officers' Superannuation Act, 1922 ;

“ the Act of 1925 ” means the Teachers (Superannuation) Act, 1925 ;

“ the Act of 1937 ” means the Local Government Superannuation Act, 1937, or that Act as applied by or by virtue of any other enactment or as extended or modified by these regulations ;



"the Superannuation Acts" means the Superannuation Acts, 1834-1946;

"the Teachers Acts" means the Teachers (Superannuation) Acts, 1918-1946;

"additional contributory payment" has the same meaning as in the Act of 1937, except that, in addition, it means any payment made for the purposes of regulation 13 (9), 13 (10), 14 (4), 14 (5) or 40 (3);

"appointed day" means such day as His Majesty may by Order-in-Council appoint under section 79 (1) of the Act, other than any day so appointed for the purposes of different provisions of the Act or for the repeal or amendment of different enactments by the Act;

"assistant practitioner" means an employee of a medical practitioner or dental practitioner on the list of an Executive Council, being himself a medical practitioner or dental practitioner wholly or mainly engaged in assisting his employer in the actual discharge of his duties as such practitioner;

"average remuneration" has the meaning assigned to it by regulation 17;

"contributory employee" has the same meaning as in the Act of 1937;

"contributing service" means service which is reckonable as contributing service in accordance with regulation 14 or 15;

"employing authority" means a Regional Hospital Board or Board of Governors of a teaching hospital, an Executive Council or a joint committee of Executive Councils constituted under section 31 (4) of the Act, and any such other body constituted under the Act as the Minister may approve;

"established service" means service in the capacity of a civil servant for the purposes of the Superannuation Acts, and the term "established civil servant" shall be construed accordingly;

"local Act authority", "local Act contributor" and "local Act scheme" have the same meanings respectively as they have in the Act of 1937;

"local health authority" includes a joint board constituted under section 19 of the Act;

"mental health officer" means an officer on the medical or nursing staff of a hospital used wholly or partly for the treatment of mental patients or an institution so used for the treatment of defectives who devotes the whole or substantially the whole of his time to the treatment or care of such patients or defectives, and such other classes or descriptions of officers employed in such hospitals or institutions as aforesaid as the Minister may designate;

"national service" means service in the armed forces of the Crown by a person called up therefor under the provisions of the National Service Acts, 1939-1946, as amended by any subsequent enactment, or work of a civil character and under civilian control undertaken or training undergone by a person as a condition of his not being registered as a person liable to be called up for service under those provisions;

"non-contributing service" means service which is reckonable as non-contributing service in accordance with regulation 14 (3);

"pensionable age" in relation to a female nurse or physiotherapist, midwife or health visitor, or a mental health officer means the age of sixty years, in relation to a medical practitioner or dental practitioner on the list of an Executive Council means the age of sixty-five years or such later age as the Minister may in any particular case allow and in relation to any other officer means the age of sixty-five years;

"practitioner" means a medical practitioner or dental practitioner

on the list of an Executive Council, and includes an assistant practitioner and a person rendering part-time specialist services pursuant to section 3 of the Act, unless, in the case of a person who devotes substantially the whole of his time to the performance of those services, the Minister otherwise directs ;

" remuneration " means all salary, wages, fees and other payments paid or made to an officer as such for his own use, and includes the money value of any apartments, rations or other allowances in kind appertaining to his employment, but does not include payments for overtime or any allowances paid to him to cover the cost of providing office or laboratory accommodation or clerical or other assistance, or any travelling or subsistence allowance or other moneys to be spent, or to cover expenses incurred by him, for the purposes of his employment ;

" service " has the meaning assigned to it by regulation 13 ; and

" war service " means war service within the meaning of the Local Government Staffs (War Service) Act, 1939, or war service or a period of war service within the meaning of the Teachers Superannuation (War Service) Act, 1939, or service in any of the naval, military or air forces of the Crown, or employment for war purposes, within the meaning of the Superannuation Schemes (War Service) Act, 1940.

(4) Where a person holds under an employing authority two or more separate employments of such a nature that he can cease to hold one without ceasing to hold the other or others, the provisions of these regulations shall, unless the context otherwise requires, apply as respects him in relation to each of the separate employments as if the other or others were an employment or employments held by him under another authority.

(5) Unless the context otherwise requires, references in these regulations to officers of an employing authority include references to persons who are deemed for the purposes of these regulations to be in the employment of an employing authority or of a body which is deemed to be an employing authority, and any other provisions relating to employment by or under an employing authority shall be construed accordingly. [2170]

## PART I

### PROVISIONS RELATING TO OFFICERS EMPLOYED BY BODIES CONSTITUTED UNDER THE ACT AND OTHER OFFICERS ENGAGED IN HEALTH SERVICES OTHERWISE THAN IN THE EMPLOYMENT OF LOCAL HEALTH AUTHORITIES OR OTHER LOCAL AUTHORITIES.

*General note.*—As will be seen from the above title, local authorities are not directly concerned with Part I of these regulations ; nor are they concerned with Part II, which relates to medical and dental practitioners.

Nevertheless, certain regulations in Part I are applied or referred to in Parts III and V (see regs. 40, 43, 47, 48, 50, 55 and 56, *post*), and are here included for convenience of reference.

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#### *Officer's pension and retiring allowance*

5. An officer of an employing authority shall be entitled, on ceasing to be employed by them, to receive the Minister—

(a) an annual pension, if either—

(i) he has completed ten years service and is incapable of discharging efficiently the duties of his employment by reason of permanent ill-health or infirmity of mind or body ; or

(ii) he has attained the age of sixty years and completed ten years service ; and

(b) a lump sum retiring allowance, if he satisfies sub-paragraph (i) of paragraph (a) of this regulation, or has attained the age of sixty years and completed five years service. [2171]

*Scales of pension and retiring allowance*

6.—(1) The pension to be paid to an officer shall, subject to the provisions of these regulations, be on the following scale, that is to say—

- (a) in respect of each year of contributing service, one-eightieth of his average remuneration ; and
- (b) in respect of each year of non-contributing service, one one-hundred-and-sixtieth of his average remuneration :

Provided that the pension, apart from any reduction thereof under regulation 80, shall not exceed forty-eightieths of the officer's average remuneration, and shall not in the case of a pension payable under regulation 5 (a) (i) be less than twenty-eightieths of such remuneration, or one-eightieth of such remuneration in respect of each year of contributing service which he could have completed before attaining pensionable age, had he continued to be an officer, and one one-hundred-and-sixtieth of such remuneration in respect of each year of non-contributing service, whichever is the less.

(2) The retiring allowance to be paid to an officer shall, subject to the provisions of these regulations, be a sum equal to the aggregate of the following amounts, namely, three-eightieths of his average remuneration in respect of each year of contributing service, and three one-hundred-and-sixtieths of such remuneration in respect of each year of non-contributing service :

Provided that—

- (a) in the case of a married male officer in respect of whose service a widow's pension may become payable under these regulations, the amount of the allowance shall be a sum equal to the aggregate of the following amounts, namely, one-eightieth of his average remuneration in respect of each year of contributing service and one one-hundred-and-sixtieth of such remuneration in respect of each year of non-contributing service ;
- (b) in the case of an officer who is a widower or who is divorced or judicially separated from his wife, the wife's death or the divorce or separation having taken place on or after the date on which he became subject to these regulations, the amount of the allowance shall be a sum equal to the aggregate of the following amounts, namely—
  - (i) three-eightieths of his average remuneration in respect of each year of contributing service since the date of his wife's death or the divorce or separation, as the case may be ;
  - (ii) one-eightieth of such remuneration in respect of each year of contributing service before that date ;
  - (iii) three one-hundred-and-sixtieths of such remuneration in respect of each year of non-contributing service since the date of his wife's death or the divorce or separation, as the case may be ; and
  - (iv) one one-hundred-and-sixtieth of such remuneration in respect of each year of non-contributing service before that date ;
- (c) if the contributing service of an officer who becomes entitled to a retiring allowance, together with his non-contributing service (if any) reckoned at half its actual length, exceeds forty years, the sum to be calculated under the foregoing provisions of this paragraph by reference to contributing service and non-contributing service shall be calculated by reference to the last forty years actual service, any non-contributing service within that period being reckoned at double its actual length ; and

- (d) in the case of an officer to whom no pension is payable, if the amount of the allowance, calculated as aforesaid, is less than the amount of his contributions, together with compound interest thereon, the allowance shall be increased by the amount of the deficiency.

(3) The pension to be paid to an officer whose service includes service as a practitioner shall be on the following scale, that is to say—

- (a) in respect of each year of contributing service otherwise than as a practitioner, one-eightieth of his average remuneration ;
- (b) in respect of each year of non-contributing service, one one-hundred-and-sixtieth of his average remuneration ; and
- (c) in respect of each year of contributing service as a practitioner, one and one-half per cent. of his remuneration as such for that year :

Provided that—

(i) in the case of an officer whose contributing service, together with his non-contributing service (if any) reckoned at half its actual length, exceeds forty years, the pension shall be an amount obtained by multiplying the amount of the pension which would have been payable apart from this proviso by forty, and dividing the product by the number of years of actual service, any non-contributing service being reckoned as aforesaid ; and

(ii) in the case of an officer who is entitled to a pension under regulation 5 (a) (i), and whose service is less than twenty years, any non-contributing service being reckoned at half its actual length, the pension shall be an amount obtained by multiplying the amount of the pension which would have been payable apart from this proviso by such number of years service, not exceeding twenty, as he could have completed before attaining pensionable age, any non-contributing service being reckoned as aforesaid, and dividing the product by the number of years of actual service, any non-contributing service being reckoned as aforesaid.

(4) The retiring allowance to be paid to an officer whose service includes service as a practitioner shall be a sum equal to the aggregate of the following amounts, namely—

- (a) in respect of each year of contributing service otherwise than as a practitioner, three-eightieths of his average remuneration ;
- (b) in respect of each year of non-contributing service, three one-hundred-and-sixtieths of his average remuneration ; and
- (c) in respect of each year of contributing service as a practitioner, four and one-half per cent. of his remuneration as such for that year :

Provided that—

(i) in the case of a married male officer in respect of whose service a widow's pension may become payable under these regulations, one-eightieth shall be substituted for three-eightieths in sub-paragraph (a) of this paragraph, one one-hundred-and-sixtieth shall be substituted for three one-hundred-and-sixtieths in sub-paragraph (b), and one and one-half per cent. shall be substituted for four and one-half per cent. in sub-paragraph (c) ;

(ii) in the case of an officer who is a widower or who is divorced or judicially separated from his wife, the wife's death or the divorce or separation having taken place on or after the date on which he first became subject to these regulations, whether by virtue of this part or part II, one-eightieth shall be substituted for three-eightieths in sub-paragraph (a) of this paragraph in relation to each year of contributing service otherwise than as a practitioner before the date of his wife's death or the divorce or

separation, as the case may be, one one-hundred-and-sixtieth shall be substituted for three one-hundred-and-sixtieths in sub-paragraph (b) in relation to each year of non-contributing service, and one and one-half per cent. shall be substituted for four and one-half per cent. in sub-paragraph (c) in relation to each year of contributing service as a practitioner before the said date ;

(iii) in the case of an officer whose contributing service, together with his non-contributing service (if any) reckoned at half its actual length, exceeds forty years, the amount of the allowance shall be an amount obtained by multiplying the amount of the allowance which would have been payable apart from this proviso by forty, and dividing the product by the number of years of actual service, any non-contributing service being reckoned as aforesaid ; and

(iv) in the case of an officer to whom no pension is payable, if the amount of the allowance, calculated as aforesaid, is less than the amount of his contributions, together with compound interest thereon, the allowance shall be increased by the amount of the deficiency. [2172]

### *Injury allowance*

7.—(1) Where an officer ceases to be employed in consequence of his being permanently incapacitated by an injury sustained by him in the actual discharge of his duty and without his own default, and specifically attributable to the nature of his duty, he shall be entitled to receive from the Minister an annual injury allowance of such amount, not exceeding two-thirds of his average remuneration, as the Minister considers reasonable, having regard to all the circumstances of the case, including any right to any benefit under the National Insurance (Industrial Injuries) Act, 1946, or any other statutory right to benefit or compensation or any right to a pension, retiring allowance or gratuity, whether under these regulations or otherwise.

(2) An injury sustained while the officer is, with the express or implied permission of the employing authority, travelling as a passenger by any vehicle to or from his place of employment shall, notwithstanding that he is under no obligation to the employing authority to travel by that vehicle, be deemed to have been sustained in the actual discharge of his duty, if—

(a) the injury would have been deemed so to have been sustained had he been under such an obligation ; and

(b) at the time of the injury, the vehicle—

(i) was being operated by or on behalf of the employing authority by some other person by whom it was provided in pursuance of arrangements made with the employing authority ; and

(ii) was not being operated in the ordinary course of a public transport service. [2173]

### *Short service gratuity*

8. An officer who has completed more than five but less than ten years service, and who ceases to be employed through incapacity to discharge efficiently the duties of his employment by reason of permanent ill-health or infirmity of mind or body shall, unless he is entitled to a retiring allowance, be entitled to receive from the Minister a short service gratuity of a sum equal to the amount of his average remuneration. [2174]

### *Allocation of part of pension or injury allowance to spouse or dependant*

9.—(1) An officer, other than a married male officer in respect of whose service a widow's pension may become payable under these regulations, who

becomes entitled to a pension or injury allowance may thereupon notify his desire, subject to and in accordance with the provisions of the first schedule, to surrender part of the pension or allowance in consideration of the grant of a pension to the spouse or any dependant of the officer on his death of such value as, according to Tables to be prepared from time to time by the Government Actuary, is actuarially equivalent at the date on which he ceased to be employed to the value of that part of the pension or allowance which is surrendered.

(2) If an officer, other than such a married male officer as aforesaid, not having reached pensionable age, would, if he ceased to be employed, be entitled to a pension, and has completed forty years contributing service or forty years contributing service and non-contributing service, the non-contributing service being reckoned at half its actual length, or if an officer, other than such a male married officer as aforesaid, having reached pensionable age, would, if he ceased to be employed, be entitled to a pension, he may, at any time before ceasing to be employed, notify his desire to surrender part of the pension in accordance with the provisions of the preceding paragraph, and if he dies before having become entitled to the pension but after having so notified his desire to surrender a part of the pension, he shall be deemed to have become entitled to the pension to which he would have become entitled had he retired on the day preceding the date of his death. [2175]

#### *Death gratuity*

##### 10. If—

- (a) an officer dies, and at the date of his death he had completed five years service ;
- (b) a person who has ceased to be an officer after completing five years service dies within twelve months after so ceasing to be an officer, or, if he ceased to be an officer in order to undertake national service, within six months after the termination of that service, without having received a return of contributions or become entitled to any other benefit under these regulations, and without having again become entitled to participate in superannuation benefits ; or
- (c) a person dies after having become entitled to a pension or retiring or injury allowance or short service gratuity ;

then the Minister shall pay to his legal personal representatives a death gratuity of a sum equal to three-eightieths of his average remuneration in respect of each year of his contributing service and three one-hundred-and-sixtieths thereof in respect of each year of his non-contributing service, or the amount of his contributions, together with compound interest on such amount, or, except in the case mentioned in paragraph (b) of this regulation, his average remuneration, whichever is the greatest :

Provided that—

- (i) in the case of a person in respect of whose death a widow's pension is payable under these regulations, the amount of the death gratuity shall be a sum equal to one-eightieth of his average remuneration in respect of each year of his contributing service and one one-hundred-and-sixtieth thereof in respect of each year of his non-contributing service ;
- (ii) in the case of such a person as is mentioned in regulation 6 (3), for the references in the foregoing provisions of this regulation to a sum to be calculated by reference to a fraction of his average remuneration in respect of each year of service there shall, subject to the provisions of the next succeeding proviso, be

substituted a reference to a sum obtained by the addition of the following amounts, namely :—

- (i) in respect of each year of contributing service otherwise than as a practitioner, three-eightieths of his average remuneration, or if a widow's pension is payable under these regulations in respect of his death, one-eightieth thereof ;
- (ii) in respect of each year of non-contributing service, three one-hundred-and-sixtieths of his average remuneration, or if a widow's pension is payable as aforesaid, one one-hundred-and-sixtieth thereof ; and
- (iii) in respect of each year of contributing service as a practitioner, four and one-half per cent. of his remuneration as such for that year, or if a widow's pension is payable as aforesaid, one and one-half per cent. thereof ;
- (iii) if in the case of a person to whom the last preceding proviso applies the contributing service, together with the non-contributing service (if any) reckoned at half its actual length, exceeds forty years, the sum obtained under the last preceding proviso shall be multiplied by forty, and the product divided by the number of years of actual service, any non-contributing service being reckoned as aforesaid ;
- (iv) if in the case of any person, other than a person to whom proviso (ii) applies, the contributing service, together with the non-contributing service (if any) reckoned at half its actual length, exceeds forty years, the sum to be calculated by reference to contributing service and non-contributing service shall be calculated by reference to the last forty years actual service, any non-contributing service within that period being reckoned at double its actual length ; and
- (v) in the case of a person who dies after having become entitled to a pension or retiring or injury allowance or short service gratuity, there shall be deducted from the death gratuity a sum equal to the aggregate amount of any payments made on account of that pension, allowance or short service gratuity, and in addition, if the person was entitled to a pension or injury allowance and had surrendered a part thereof, any sum which would have been paid on account thereof but for the surrender. [2176]

#### *Widow's pension*

11.—(1) The widow of a person who was entitled to a pension or injury allowance, or the widow of an officer who had completed not less than ten years service, shall be entitled to receive from the Minister an annual widow's pension :

Provided that the foregoing provision shall not apply, in the former case, if the marriage took place on or after the date on which the husband became entitled to the pension or allowance, or, in either case, if the husband, before ceasing to be employed or, if he died while still an officer, before dying, had reached pensionable age or, not having reached pensionable age, would have been entitled to a pension on ceasing to be employed and had completed forty years contributing service, or forty years contributing service and non-contributing service, the non-contributing service being reckoned at half its actual length, and the marriage took place on or after the date on which he reached pensionable age or would have been so entitled to a pension as aforesaid, as the case may be, or if the wife was herself entitled to a pension under these regulations or became so entitled on the death of her husband, or if the husband and wife were judicially separated.



(2) The widow of such a person as is mentioned in regulation 10 (b) shall be entitled to the like benefit (if any) by way of widow's pension as would have been granted if her husband had died immediately before ceasing to be an officer.

(3) The amount of the widow's pension shall be as follows—

- (a) in the case of the widow of an officer, one-third of the pension which would have been payable to the officer had he become entitled to a pension under regulation 5 (a) (i) on the day preceding his death; and
- (b) in the case of the widow of a person who was entitled to a pension or injury allowance, one-third of such pension or allowance :

Provided that—

- (i) if in either case the age of the widow was less than that of her husband and she has no children or ceases to have any children included in her family within the meaning of the Family Allowances Act, 1945, or her age was greater than that of her husband, the widow's pension shall be reduced or increased, as the case may require, where the case falls within Table A or Table B set out in the second schedule, by an amount calculated in accordance with that Table, and in any other case, by such an amount as shall be certified to be just by the Government Actuary; and
- (ii) if any such pension as is mentioned in sub-paragraph (a) of this paragraph would have been reduced under the provisions of regulation 30, no account shall be taken of the reduction, and any such pension as is mentioned in sub-paragraph (b) shall be deemed to be the pension that would have been payable but for any reduction under those provisions.

(4) A widow's pension shall cease to be payable to a widow if she remarries, or in respect of any period during which she is cohabiting with a man as his wife.

(5) If on the re-marriage or death of a widow to whom a widow's pension has been payable, the aggregate amount of the payments made to her, her husband or her husband's legal personal representatives by way of pension, retiring or injury allowance or death gratuity, is less than the amount of the death gratuity which would have been payable in respect of the death of her husband had no widow's pension been payable in respect thereof, there shall be paid to her or to her legal personal representatives, as the case may require, a sum equal to the deficiency. [2177]

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### *Meaning of service*

13.—(1) For the purposes of these regulations the term "service" in relation to an officer of an employing authority means continuous employment under that authority as an officer, after attaining the age of eighteen years and before attaining pensionable age, and any other employment or any war service or national service which by or in pursuance of these regulations is reckonable as service in relation to his employment as such officer, but does not include, in the case of an officer who enters employment after having become entitled to receive superannuation benefits, whether under these regulations or otherwise, employment in respect of which he became entitled to those benefits.

(2) Where a person, before entering the employment in which he is an officer, had been entitled by virtue of any such employment as is mentioned

in the next succeeding paragraph to participate in superannuation benefits, and on leaving that other employment any period of employment or any war service or national service would have been reckonable for the purpose of determining whether he was entitled to receive a superannuation benefit, that period of employment, war service or national service shall be reckonable as service in relation to the employment in which he is an officer, if he entered that employment within twelve months after leaving that other employment, or if he left that other employment in order to undertake war service or, being an officer of an employing authority, in order to undertake national service, within six months after the termination of that service :

Provided that—

(a) the foregoing provision shall not apply to any officer who does not, within three months after entering their employment, give notice in writing to the employing authority of his previous period of employment and war service or national service (if any), and pay or repay to that authority an amount equal to any sum paid to him by way of return of contributions on or after his ceasing to hold that other employment, together with an amount equal to any income tax or equivalent sum which was deducted from his contributions in respect of such payment ;

(b) in the case of a person who, before entering the employment in relation to which he is an officer, was employed in such employment as is mentioned in sub-paragraph (c) of the next succeeding paragraph—

(i) for the purposes of the foregoing provisions of this paragraph, the term “period of employment” shall include any period treated as a period of employment in contributory service or as a period of contributory service under the Teachers Acts ;

(ii) any period of approved external service within the meaning of the Teachers Acts, and any period of contributory service under any scheme made under section 21 (1) (a) of the Act of 1925 shall not be reckonable as service under these regulations, except for the sole purpose of determining whether he is entitled to any benefit thereunder ; and

(iii) any period of employment which was qualifying service within the meaning of the Act of 1925, and any period of employment which under section 12 (2) of that Act, would, by reason of the repayment of contributions, have been excluded in reckoning periods of contributory or recognised service for the purposes of Part II of the said Act shall be disregarded.

(c) in the case of such a person as is mentioned in the last preceding proviso who, before the first day of April, 1926, had been employed in full-time service as an organiser within the meaning of section 14 (1) of the Act of 1925, such period of employment as an organiser, and any period of employment before the said date as a teacher in recognised service shall, except for the purpose of determining whether any benefit is payable under these regulations, be reckonable in whichever of the following ways is more advantageous to him, that is to say—

(i) his period of employment (if any) as a teacher in recognised service shall be reckonable in full, and his period of employment as an organiser shall be disregarded ; or

(ii) the period for which he was so employed in either of those capacities shall be reckonable at half its actual length ;

(d) in the case of a person who, before entering the employment in relation to which he is an officer, was an established civil servant, any part of his established service which is attributable to service which previously to his becoming an established civil servant had been non-contributing service under these regulations shall for the purpose of determining whether any benefit is payable to or in respect of him but not for the purpose of calculating any benefit to which he may become entitled be treated as being double its actual length ; and

(e) any period of employment which on a person's leaving such employment as is mentioned in sub-paragraph (a), (b) or (d) of the next succeeding paragraph would have been reckonable solely for the purpose of determining whether he was entitled to receive a superannuation benefit shall not be reckonable as service under these regulations except for the sole purpose of determining whether he is entitled to any benefit thereunder.

(3) The other employment referred to in the last preceding paragraph is—

(a) employment as an officer of an employing authority ;

(b) employment as an established civil servant ;

(c) employment as a person in contributory service under the Teachers Acts, otherwise than under any scheme made under section 21 (1) (a) of the Act of 1925, or otherwise than by virtue of section 13 (2) (g) of that Act ;

(d) employment subject to—

(i) the Act of 1909 ;

(ii) the Act of 1937 ;

(iii) a local Act scheme ;

(iv) the Insurance Committee Officers' Superannuation Scheme ; or

(v) any other scheme which the Minister, with the consent of the body administering the scheme, may approve.

(4) If under the last two preceding paragraphs there is reckonable any previous employment in the case of a person who becomes an officer of an employing authority after having been engaged in war service, and that war service would have been reckonable as service under the enactment or scheme to which he was subject before he ceased to be employed in order to undertake that war service, had he again become subject to that enactment or scheme on the termination thereof, the period of war service shall be reckonable as a period of service under these regulations.

(5) If an officer of an employing authority ceases to be employed in order to undertake national service and, on the termination of that service or within six months thereafter returns to the employment of any employing authority, the period of that service shall be reckonable as a period of service under these regulations :

Provided that if on or after so ceasing to be employed as aforesaid he received a return of contributions—

(a) no part of such period after the date of the return shall be reckonable as service ; and

(b) the part of such period before the date of the return shall only be reckonable if he pays or repays to the employing authority whose employment he has entered, within three months after entering their employment, an amount equal to the sum returned to him, together with an amount equal to any income tax which was deducted from his contributions in respect of such return.

(6) Where an officer to whom the last preceding paragraph applies—

- (a) dies during his period of national service ; or
- (b) is prevented, in consequence of being permanently incapacitated by injury or disease received or contracted during that period, from resuming employment under any employing authority ;

he shall be deemed to have returned to the employment of an employing authority immediately before his death or on the termination of that period of service, as the case may be.

(7) If a person becomes an officer of an employing authority by virtue of sub-paragraph (e) or (h) of paragraph (1) of regulation 2, or if such a person as is mentioned in either of those sub-paragraphs, before completing the period of two years therein mentioned, becomes an officer by virtue of sub-paragraph (a) or (f) of paragraph (1) of regulation 2 then, any previous periods of employment under any employing authorities which are included in the said period of two years, and any period of national service undertaken by the person on his ceasing to hold employment under any employing authority which is included in that period of two years by virtue of proviso (ii) (iii) to paragraph (1) of regulation 2, shall be reckonable as service.

(8) In the case of a person who is transferred under the Act to the employment of an employing authority or who enters the employment of an employment authority in consequence of the acquisition by the Minister under section 58 of the Act of a hospital at or for the purposes of which he was employed at the date of acquisition, and who thereupon becomes an officer of that employing authority, there shall be reckonable as service, for the purpose of determining whether any benefit is payable to or in respect of him but not for the purpose of calculating any benefit to which he may become entitled, all periods of employment, not otherwise reckonable as service, after he attained the age of eighteen years, under any authority or body from which functions are transferred by the Act, or under an officer of such an authority or body or at or for the purposes of any hospital which has been transferred to or acquired by the Minister under the Act, and, if he left any such employment as aforesaid in order to undertake war service or, if that employment was at or for the purposes of a hospital acquired by the Minister under the Act, in order to undertake national service, and within six months after the termination of that service returned to any such employment as aforesaid, or entered the employment of an employing authority in circumstances in which regulation 50 applied, there shall also be reckonable as service for the purpose aforesaid the period of that war service or national service.

(9) If a person after ceasing to be an officer of an employing authority (other than a person in respect of whom a transfer value was paid by the Minister or a payment was made under regulation 46 (1), which transfer value or payment has not been refunded) enters the employment of that authority or any other employing authority in circumstances in which none of the preceding paragraphs of this regulation applies in his case, he shall be entitled, if he gives notice in writing to the employing authority within three months after entering their employment that he intends so to do, to make payments in accordance with the provisions of the fourth schedule, as if any employment, war service or national service which was reckonable as service at the date on which he ceased to be an officer, not being employment reckonable solely for the purpose of determining whether any benefit was payable under these regulations, was non-contributing service, and any period of such employment, war service or national service in respect of which such payments are made or are in the course of being made shall be reckonable as service.

(10) If an officer to whom the last preceding paragraph applies previously

ceased to be an officer of an employing authority in order to undertake national service, the last preceding paragraph shall also apply in respect of the period of that service other than any part thereof after the date on which contributions may have been returned to him. [2178]

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*Conditions attaching to grant of pension or injury allowance*

20.—(1) Where a person who has not attained the age of sixty years is in receipt of a pension under regulation 5 (a) (i) or an injury allowance, and the Minister is satisfied that he has become capable of resuming the duties of his employment, he may require him to enter the employment of any employing authority in any capacity for which his previous experience may render him suitable, and if he declines to enter that employment, or declines or neglects satisfactorily to discharge the duties thereof, he shall not be entitled to any payment on account of the pension or allowance in respect of any period before he attains the age of sixty years :

Provided that the Minister shall not require a person to whom this paragraph applies to enter the employment of an employing authority if that person has entered or enters any other employment approved by the Minister, so long as he continues in employment so approved.

(2) The Minister may require a person to whom paragraph (1) of this regulation applies to submit himself to a medical examination by a registered medical practitioner selected by the Minister, and, if he does so, he shall also offer the person an opportunity of submitting a report from the person's own medical adviser as a result of an examination made by him, and the Minister shall take that report into consideration, together with the report of the medical practitioner selected by the Minister.

(3) If a person fails to comply with a requirement made under the last preceding paragraph he shall be treated as if the Minister were satisfied that he had become capable of resuming the duties of his employment.

(4) Where the Minister is satisfied that a person to whom paragraph (1) of this regulation applies is capable of resuming the duties of his employment but the person is unwilling to accept employment under an employing authority which has been offered to him, and the Minister has not approved any other employment he may have entered or proposes to enter, the Minister, before requiring him to enter the employment which has been offered to him or any other employment, shall refer the matter to a referee or board of referees appointed for the purpose by the Minister of Labour and National Service, and shall consider the advice they tender, after having interviewed the person and afforded him an opportunity of stating his case, as to whether, regard being had to his previous experience and all the circumstances of the case, it being assumed that he is capable of resuming the duties of his employment, it would be reasonable to require him to enter the employment which has been offered to him or any other employment specified by the referee or board of referees. [2179]

*Pensioner accepting further employment*

21.—(1) Where a person entitled to a pension or injury allowance enters employment, whether pursuant to the provisions of the last preceding regulation or otherwise, the remuneration of which is payable out of public funds, he shall not, so long as he holds that employment, be entitled to receive any greater amount of the pension or allowance than would make up the amount, if any, by which the annual emoluments of that employment fall short of the annual remuneration or average remuneration of the employment in relation to which he became entitled to the pension or allowance, whichever is the greater.

(2) Where such a person as aforesaid (other than a person to whom regulation 20 applies) proposes to accept further employment the remuneration of which will be payable out of public funds, he shall inform his prospective employer that he is so entitled, and, if he enters that employment, shall forthwith give notice in writing to the Minister that he is so employed. [2180]

*Option to transferred officers to retain rights corresponding with those enjoyed prior to transfer*

22.—(1) Where a person, on being transferred under the Act, becomes an officer in the employment of any employing authority, having immediately before becoming such officer been subject to the provisions of—

- (a) the Superannuation Acts ;
- (b) the Act of 1909 ;
- (c) the Act of 1937 ;
- (d) a local Act scheme ;
- (e) the Insurance Committee Officers' Superannuation Scheme ; or
- (f) any scheme approved by the Minister under regulation 13 (3) (d) (v) ;

then, if he notifies the employing authority in writing within three months after becoming such officer that he does not wish to avail himself of the benefits provided by these regulations, the provisions of this part shall apply to and in respect of him, as if, in relation to his employment as such officer, they required him to make the like contributions (if any) as he would have been liable to make and conferred upon him rights corresponding with those which he would have enjoyed if he had remained subject to the enactment or scheme previously applicable in his case, and those provisions shall continue so to apply to and in respect of him so long as he is an officer of any employing authority without a break in employment of more than twelve months, and without his having during any break in employment become entitled to participate in superannuation benefits by virtue of employment otherwise than under an employing authority :

Provided that—

- (a) where a person to whom this paragraph applies at any time ceases to be an officer of an employing authority in order to undertake national service, but again becomes an officer of an employing authority within six months after the termination of that service, the period of that service shall not be treated as such a break in employment as aforesaid ;
- (b) if a person who has exercised the option conferred by the foregoing provision to retain rights corresponding with those enjoyed under the Act of 1909 or the Superannuation Acts was immediately before being transferred under the Act an established officer or servant of the first class under the Act of 1909 or a person to whom the Superannuation (Prison Officers) Act, 1919, applied, and is at any time employed otherwise than for the purposes of a hospital or part of a hospital used for the treatment of mental patients or an institution or part of an institution used for the treatment of defectives, the option shall cease to have effect ; and
- (c) if a person (other than a mental health officer) who has exercised the said option to retain rights corresponding with those enjoyed under any enactment or scheme at any time becomes a mental health officer, he may, if he notifies the employing authority in writing within one month after becoming such an officer that he so desires, avail himself of the benefits provided by these regulations in lieu of the rights to which he was previously entitled, and, if he does so, the option shall cease to have effect.



(2) The provisions of the preceding paragraph shall apply to an officer who, having been subject to the Act of 1937 or a local Act scheme, had before being transferred under the Act attained the age of compulsory retirement applicable in his case, or who attains pensionable age on, or within three months after, being so transferred, as if on becoming an officer he had exercised the option thereby conferred to retain rights corresponding with those enjoyed under the Act of 1937 or the local Act scheme, as the case may be.

(3) Where a person who, pursuant to the preceding provisions of this regulation is required to make the like contributions as he would have been liable to make and becomes entitled to enjoy rights corresponding with those he would have enjoyed if he had remained subject to the enactment or scheme previously applicable in his case, was immediately before being transferred under the Act a contributor to a thrift fund, a widows' and orphans' pensions fund or any other fund established under express statutory authority for the purpose of providing benefits which are supplementary to or in augmentation of the superannuation benefits provided under the said enactment or scheme, he shall make additional contributions under these regulations of the like amount as those he would have been liable to make to the said fund if he had remained subject to the said enactment or scheme, and shall in consideration thereof be entitled to the like rights under these regulations as he would have enjoyed had those contributions been contributions to the said fund. [2181]

*Benefits of transferred officers who do not exercise option to retain previous rights*

23.—(1) The provisions of this regulation shall apply in the case of any officer to whom the last preceding regulation applies (other than an officer who was subject immediately before becoming an officer to an enactment or scheme which included a title to a death gratuity among its benefits), and who does not exercise the option thereby conferred, or in whose case any option exercised thereunder has ceased to have effect.

(2) The amount of any retiring allowance payable to any such officer shall be increased by one-half per cent. in respect of each year of contributing service, and one-quarter per cent. in respect of each year of non-contributing service, reckonable, in the case of an officer who did not exercise the said option, in respect of any period prior to his becoming an officer, or, in the case of an officer who exercised the said option but in whose case the option has ceased to have effect, in respect of any period prior to the date on which the option ceased to have effect:

Provided that where the whole or any part of the retiring allowance payable to the officer in respect of any such period as is mentioned in this paragraph falls to be calculated, in the case of any year of contributing service by reference to one-eightieth of the officer's average remuneration, and in the case of any year of non-contributing service by reference to one one-hundred-and-sixtieth of such remuneration, one and one-half per cent. shall be substituted for one-half per cent. in respect of each such year of contributing service, and three-quarters per cent. shall be substituted for one-quarter per cent. in respect of each such year of non-contributing service. [2182]

*Persons subject to non-statutory superannuation schemes and arrangements*

24.—(1) Where any person (not being a person to whom regulation 22 applies), on being transferred under the Act or in consequence of the acquisition by the Minister under section 58 of the Act of a hospital at or for the purposes of which he was employed at the date of acquisition, becomes an officer of an employing authority, then, if on the nineteenth day of March, 1946 (or such later date as the Minister may determine in the case of a person



who had been employed at or for the purposes of a hospital so acquired by the Minister as aforesaid) and immediately before becoming such officer he was participating in the superannuation scheme operated under the Federated Superannuation System for Universities or the Federated Superannuation Scheme for Nurses and Hospital Officers, and if the officer so requests the employing authority in writing within three months after becoming such officer, and if the body administering the scheme consents, and enters into the necessary arrangements with the Minister for the purpose, the Minister shall, so long as the person remains without a break of more than one month at any one time an officer in the employment of any employing authority, pay the contributions authorised or required by the scheme to be paid by the employer, other than contributions in respect of any policy of insurance taken out under the scheme between the eighteenth day of March, 1946, and the appointed day (or in the case of a person who had been employed at or for the purposes of a hospital so acquired by the Minister as aforesaid between such later date as the Minister may determine and the date of acquisition), and in that event the officer shall not as such officer be subject to any provisions of these regulations except those contained in this and the next succeeding regulation, and the Minister may, if he thinks fit, with the consent of the body administering the scheme, and subject to such arrangements as he may make with that body, also pay the contributions authorised or required by the scheme to be paid by the employer in respect of any policy of insurance taken out under the scheme after the eighteenth day of March, 1946, or such later date as aforesaid, as the case may require.

(2) Where any such person as is mentioned in the last preceding paragraph, immediately before becoming an officer of an employing authority, was participating in any superannuation scheme of a similar character to the schemes therein mentioned, or was participating or had reasonable expectations of participating in any other scheme or arrangements for the provision of superannuation benefits, then, if the officer so requests the employing authority in writing within three months after becoming such officer, the Minister shall consider all the circumstances of the case, including any change which may have occurred on the person becoming an officer in the emoluments previously enjoyed by him, and if he is satisfied that undue hardship would result if the provisions of this paragraph were not applied to the officer, the Minister shall, if any relevant scheme continues to be administered by a body, with the consent of and subject to such arrangements as he may make with that body, pay the contributions authorised or required by that scheme to be paid by the employer, and in any other case the Minister may carry out the relevant scheme or arrangements, and in that event the officer shall not as such officer be subject to any provisions of these regulations except those contained in this and the next succeeding regulation :

Provided that this paragraph shall apply only so long as the person remains without a break of more than one month at any one time an officer in the employment of any employing authority.

(3) Subject to the provisions of the two preceding paragraphs, where a person becomes an officer of an employing authority, having immediately before becoming such officer been participating in either of the superannuation schemes mentioned in paragraph (1) of this regulation or any other scheme approved by the Minister for the purposes of this paragraph, then, if the officer so requests the employing authority in writing within three months after becoming such officer, the Minister may, with the consent of the body administering the scheme, and subject to such arrangements as he may make with that body, pay the contributions authorised or required by the scheme to be paid by the employer, and in that event the officer shall not as such officer be subject to any provisions of these regulations except those contained in this regulation :

Provided that this paragraph shall apply only so long as the person remains without a break of more than a month at any one time an officer in the employment of any employing authority.

(4) Where contributions are paid by the Minister under the foregoing provisions of this regulation in respect of any person, the employing authority shall deduct from that person's remuneration the amount of the contributions required by the scheme to be paid by the employee, and shall pay the same to the Minister, together with the like contributions which they would have paid in respect of that person under regulation 4 but for the provisions of this regulation. [2183]

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#### *Female Nurses and Physiotherapists, Midwives and Health Visitors*

28. These regulations, in their application to female nurses (other than mental health officers) and physiotherapists, midwives and health visitors, shall have effect subject to the modification that in regulations 5 and 20 (1) fifty-five years shall be substituted for sixty years. [2184]

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### PART III

#### OFFICERS OF LOCAL HEALTH AUTHORITIES

##### *Application*

39.—(1) As from the appointed day, this part of these regulations shall apply to any employee of a local health authority who is—

- (a) a contributory employee or local Act contributor on the medical or nursing staff of the authority ;
- (b) a contributory employee or local Act contributor falling within such class or description of persons as the Minister may designate, after consultation with such associations of local authorities as appear to him to be concerned ; or
- (c) a person transferred under the Act to their employment, and who immediately before being so transferred was a contributory employee or local Act contributor :

Provided that—

- (i) this part shall not apply in the case of an officer in the employment of a local health authority on the appointed day who immediately before that day was a contributory employee or local Act contributor, if within three months after the appointed day he gives notice in writing to the local health authority that he does not wish this part of these regulations to apply to him ; and
- (ii) the provisions of sub-paragraph (c) of this paragraph shall apply to such an officer as is therein mentioned only so long as he remains in the employment of the local health authority to which he was transferred under the Act, whether in the same post or in any other post.

(2) If such an officer as is mentioned in sub-paragraph (c) of the preceding paragraph is transferred under the Act before the appointed day, this regulation shall have effect in relation to him as if the date of transfer were the appointed day.

(3) A person who by virtue of a single appointment under any authority which is a local health authority is engaged in services in respect of which he is an officer to whom this part applies and also in other services shall not

be treated as an officer to whom this part applies unless in such appointment he is mainly engaged in such services as are first hereinbefore mentioned. [2185]

*Extension and modification of the Act of 1937 and local Act schemes*

40.—(1) The Act of 1937 and any local Act scheme shall extend and apply in relation to any officer to whom this part applies as if, in consideration of the contributions required thereby, there were substituted for any title accruing in respect of service reckonable thereunder to a superannuation allowance, lump sum retiring allowance, injury allowance or death gratuity a title to such benefits as are conferred by regulations 5 to 7 inclusive, as modified by regulation 28, and regulation 10, and there were conferred by the Act or scheme in addition, or in substitution for any similar benefits to which an officer might become entitled thereunder, in respect of service reckonable under the Act or scheme, the benefits conferred by regulations 8, 9 and 11, and the Act of 1937 and any local Act scheme shall have effect accordingly, with any necessary modifications, including the modification in relation to a local Act scheme that references to contributing service in any of the said regulations shall be read as references to service, and references to non-contributing service shall be disregarded.

(2) The amount of any retiring allowance to which an officer to whom proviso (i) to paragraph (1) of the last preceding regulation applies, and who does not exercise the option thereby conferred, may become entitled shall be increased, as nearly as may be, in accordance with the provisions of regulation 23 (2).

(3) The Act of 1937, in its application to any such officer as aforesaid, shall be further modified to confer a right on him by making payments similar to those provided for by the fourth schedule to reckon any period of non-contributing service as a period of contributing service, and shall have effect as if the provisions of the fourth schedule were incorporated therein with any necessary modifications.

(4) Any pension or injury allowance to which any such officer as aforesaid becomes entitled in consequence of this regulation shall be granted subject to the conditions contained in regulations 20 and 21, with any necessary modifications, in lieu of any similar conditions in corresponding provisions of the Act of 1937 or any local Act scheme. [2186]

*Application to voluntary organisations of the Act of 1937 and local Act schemes*

41.—(1) If application for the purpose is made to a local health authority by a voluntary organisation engaged in the provision in the area of the authority of services under Part III of the Act or under the Mental Deficiency Acts, 1913 to 1938, the authority, or, in the case of an authority who are not an administering authority or local Act authority, the administering authority, shall admit any members of such classes of employee of the organisation and on such terms and conditions as may be approved by the Minister, to participate in the benefits of the superannuation fund maintained by them, and in that event the Act of 1937, as modified by these regulations in any case in which that Act as so modified is applicable, shall have effect in relation to the organisation and any employee so admitted as if the organisation were a local authority and the employee were a contributory employee, and any local Act scheme, as modified by these regulations in any case in which that scheme as so modified is applicable, shall have effect as if the employee were a local Act contributor, and the organisation shall in either case have all such powers as may be necessary for the purposes of giving effect to the terms and conditions approved by the Minister.

(2) An admission agreement made under subsection (5) of section 5 of

the Act of 1937 and in force immediately before the appointed day shall, notwithstanding the repeal of that subsection by these regulations, continue in force as if made under this regulation, subject, however, to such modifications and adaptations as the parties concerned may, with the approval of the Minister, determine to be necessary for bringing it into accordance with the provisions of this regulation. [2187]

## PART IV

### OFFICERS OF LOCAL EDUCATION AUTHORITIES

#### *Application of part III*

42. As from the appointed day, part III of these regulations shall also apply, with the necessary modifications, to any contributory employee or local Act contributor employed by a local education authority for the purposes of the school health service who is an officer falling within the class mentioned in regulation 39 (1) (a) or who is an officer falling within such class or description as the Minister may designate, after consultation with such associations of local authorities as appear to him to be concerned :

Provided that this part shall not apply in the case of an officer in the employment of a local education authority on the appointed day who immediately before that day was a contributory employee or local Act contributor, if within three months after the appointed day he gives notice in writing to the local education authority that he does not wish this part of these regulations to apply to him. [2188]

## PART V

### MISCELLANEOUS

#### *Officers holding other employment*

43.—(1) If an officer in the employment of an employing authority, being an officer to whom part I applies (other than an officer who has exercised an option under regulation 22 which has not ceased to have effect), is simultaneously employed in any other employment in which, but for the provisions of this regulation, he would be a contributory employee or local Act contributor, then, if the total time spent by him in those employments is wholly or mainly devoted to health services (including the school health service), the provisions of part I of these regulations shall also apply to him in relation to such other employment as aforesaid in lieu of the provisions of the Act of 1937 or the local Act scheme, as the case may be, as if the authority or body by whom he is employed were an employing authority.

(2) Where a person becomes subject to the provisions of part I of these regulations by virtue of the preceding paragraph in any employment in which he was a contributory employee or local Act contributor immediately before becoming so subject, then, for the purposes of these regulations, if he becomes so subject on being transferred under the Act to the employment of an employing authority, he shall also be treated as having been transferred under the Act to such first mentioned employment, and, if he becomes so subject otherwise than on being transferred under the Act, he shall be treated as having entered such employment at the date on which he becomes so subject, and in either case a transfer value shall be payable to the Minister in accordance with the provisions of regulation 47.

(3) Where a person ceases to be subject to the provisions of part I of these regulations in relation to any such other employment as is mentioned in paragraph (1) of this regulation by virtue of that paragraph having ceased to apply, and he becomes in that employment a contributory employee or local Act contributor, as the case may be, he shall be treated for the purposes

of these regulations as having become a contributory employee or local Act contributor in that employment immediately after ceasing to be employed by an employing authority, and a transfer value shall be payable by the Minister in accordance with the provisions of regulation 49. [2189]

*Reckoning of service on transfer to other employment*

44.—(1) Where a person, within twelve months after leaving employment as an officer of an employing authority or, in the case of a person who left such employment in order to undertake national service, within six months after the termination of that service, and without having become entitled to any benefit under these regulations other than a return of contributions, becomes a contributory employee, local Act contributor, established civil servant or a person in contributory service under the Teachers Acts otherwise than under any scheme made under section 21 (1) (a) of the act of 1925, and otherwise than by virtue of section 13 (2) (g) of that Act, he shall be entitled :—

- (a) if he becomes a contributory employee, to reckon as service, contributing service and non-contributing service respectively, all periods of employment, war service or national service which he was so entitled to reckon for the purposes of these regulations in relation to his employment under the employing authority immediately before he ceased to be employed by them, and as contributing service any period of national service after so ceasing to be employed, excluding, in the event of his having received a return of contributions on or after so ceasing to be employed, any part of that period after the date of the return ;
- (b) if he becomes a local Act contributor, to reckon his previous service and any period of national service after so ceasing to be employed in such manner as the Minister may approve with a view to securing, so far as is reasonably practicable, that he shall enjoy rights under the local Act scheme applicable to him substantially similar to those which he would have enjoyed under the last preceding subparagraph had he become a contributory employee ; and
- (c) if he becomes an established civil servant or a person in such contributory service under the Teachers Acts as aforesaid, to reckon as established service or contributory service, as the case may be, all periods of employment, war service or national service which for the purposes of these regulations he was entitled to reckon as contributing service or non-contributing service in relation to his employment under the employing authority immediately before he ceased to be employed by them, and any period of national service after so ceasing to be employed, excluding, in the event of his having received a return of contributions on or after so ceasing to be employed, any part of that period after the date of the return, and to reckon as established service for the purpose of determining whether he has served for the minimum period prescribed under the Superannuation Acts for the payment of a superannuation allowance or additional allowance or gratuity to his personal representatives on his death, or as qualifying service for the purposes of the Teachers Acts, any service which he was entitled to reckon in relation to his former employment solely for the purpose of determining whether he was entitled to any benefit under these regulations :

Provided that—

- (i) the foregoing provisions of this paragraph shall not apply to any person who does not, within three months after entering his new employment, give notice in writing to

his employer of his previous period of employment and war service or national service (if any), and pay to his employer, or, if he becomes an established civil servant, repay to the Minister, or, if he becomes a person in such contributory service under the Teachers Acts as aforesaid, pay to the Minister of Education, an amount equal to any sum paid to him by way of return of contributions on or after his ceasing to hold his former employment, together with an amount equal to any income tax which was deducted from his contributions in respect of such payment; and

- (ii) for all the purposes of sub-paragraph (c) of this paragraph, except the calculation of any qualifying period of service, any period of non-contributing service shall be treated as being half its actual length, and any period of part-time service shall be treated as though it were whole-time service for a proportionately reduced period.

(2) Where an established civil servant to whom sub-paragraph (c) of the last preceding paragraph applies ceases to be employed as such in circumstances which under these regulations would have entitled him to a return of contributions had he then ceased to be employed by an employing authority, he shall be entitled to receive from the Minister a sum equal to the amount to which he would have been so entitled as aforesaid.

(3) Where an officer of an employing authority becomes a person in contributory service under the Teachers Acts, and the provisions of paragraph (1) of this regulation do not apply to him, then, without prejudice to the proviso to section 12 (2) of the Act of 1925, as amended by these regulations, any period of employment, war service or national service which would have been reckonable under sub-paragraph (c) of that paragraph had that paragraph applied to him shall be treated as qualifying service for the purposes of the Teachers Acts. [2190]

#### *Persons subject to non-statutory superannuation schemes*

45.—(1) Where an employee of a local authority, being a person to whom part III or IV of these regulations applies, was within twelve months before entering their employment a person to whom the provisions of paragraph (1) or (2) of regulation 24 applied as a participant in any such scheme as is mentioned in paragraph (1) of that regulation, or in any other scheme of a similar character, that authority shall, if the employee so requests in writing within three months after entering their employment, and if the body administering the scheme consents, and makes the necessary arrangements for the purpose, pay the contributions authorised or required by the scheme to be paid by the employer, and in that event the employee shall not be subject to the Act of 1937 or any local Act scheme.

(2) Where contributions are paid by a local authority under paragraph (1) of this regulation in respect of any employee, that authority shall deduct from the remuneration payable to the employee the amount of any contributions required by the scheme to be paid by the employee. [2191]

#### *Rights on transfer to non-statutory superannuation schemes and approved employment*

46.—(1) Where a person within twelve months after ceasing to be employed as an officer by an employing authority and without having received a return of contributions or become entitled to any other benefit under these regulations becomes a participant in the superannuation scheme operated under the Federated Superannuation System for Universities or the Federated



Superannuation Scheme for Nurses and Hospital Officers or any other superannuation scheme approved by the Minister, he may within three months thereafter notify the Minister that he desires the provisions of this paragraph to apply to him, and, in that event, the Minister may, if the body administering the scheme undertakes to invest or secure the investment of such sum for his benefit under the scheme, and to comply with the provisions of the next succeeding paragraph, pay to that body a sum not exceeding the amount of the transfer value which would have been payable under regulation 49 had he become a contributory employee in circumstances to which that regulation applies.

(2) If a person to whom the preceding paragraph has been applied ceases to participate in the scheme in circumstances in which the only benefit to which he becomes entitled is a sum by way of the return of any of his contributions thereunder, the body administering the scheme shall also pay to him a sum equal to the amount which would have been paid to him by way of a return of his contributions under these regulations on his ceasing to be employed as an officer of an employing authority, and shall refund to the Minister an amount equal to the sum paid by the Minister under the preceding paragraph in respect of him, after the deduction therefrom of a sum equal to the amount paid to him by way of a return of his contributions under these regulations, and the addition thereto of an amount equal to interest on the sum so paid by the Minister, as from the date of payment, at the rate which would have been payable under the scheme on contributions returned thereunder at the date on which the sum was paid by the Minister.

(3) If such a person as is mentioned in the last preceding paragraph, within twelve months after ceasing so to participate in the scheme and within five years after ceasing to be employed as an officer by an employing authority, again becomes an officer of an employing authority to whom part I of these regulations applies, he shall be entitled, if he pays or repays to the employing authority any contributions under these regulations returned to him by the body administering the scheme, to reckon as service, contributing service and non-contributing service respectively, all periods of employment, war service or national service which he was so entitled to reckon in relation to his employment under the former employing authority immediately before the date on which he ceased to be employed by them.

(4) Where a person within twelve months after ceasing to be employed as an officer by an employing authority, and without having received a return of contributions or become entitled to any other benefit under these regulations, enters employment in which he does not become entitled to reckon his service under these regulations for the purpose of participating in any superannuation benefits, otherwise than for the sole purpose of determining whether any such benefits are payable, he may, unless he is a person to whom paragraph (1) of this regulation has been applied, within three months after entering that employment, apply to the Minister to approve the employment for the purposes of this paragraph, and if the employment is so approved and—

- (a) if he ceases to hold that employment, or any other employment approved by the Minister for the purposes of this paragraph, in such circumstances, including that of his age, as, had they obtained when he ceased to hold his employment under the employing authority, would have entitled him to any benefit under these regulations, the Minister may grant him that benefit, as from the date on which he ceases to hold the approved employment, calculated as if he had become entitled to that benefit at the date on which he ceased to be an officer of the employing authority ;
- (b) if he dies while in approved employment, the Minister may grant the like benefits (if any) by way of widow's pension and death



- gratuity as would have been granted if he had died immediately before he ceased to be employed by the employing authority ; or
- (c) if within twelve months after ceasing to hold approved employment he again becomes an officer of an employing authority to whom part I of these regulations applies, he shall be entitled to reckon as service, contributing service and non-contributing service respectively all periods of employment, war service or national service which he was so entitled to reckon in relation to his employment under the former employing authority immediately before the date on which he ceased to be employed by them :

Provided that in the application of regulation 10 for the purpose of subparagraph (b) of this paragraph the reference to a sum equal to his average remuneration shall be disregarded. [2192]

*Transfer values payable to the Minister*

47.—(1) Where a person becomes an officer of an employing authority within twelve months after ceasing to be a contributory employee or local Act contributor, or, in the case of a person who so ceased in order to undertake war service, within six months after the termination of his war service, and without having become entitled to any benefit under the Act of 1937 or local Act scheme other than a return of contributions, the like transfer value shall be payable to the Minister out of the fund in relation to which the person was a contributor by the authority maintaining that fund as would have been payable under the regulations for the time being in force by virtue of section 29 of the Act of 1937 had the person as such officer become a contributory employee, less an amount equal to any sum which the trustees of the fund may become liable to pay by way of income tax in respect of the amount transferred by way of transfer value :

Provided that—

- (a) in the case of a person to whom regulation 22 (3) applies, the transfer value shall be increased by such amount as the Minister shall determine to be actuarially equivalent to the liability of which the fund therein referred to is relieved as a result of that person ceasing to be a contributor thereto, and such amount as aforesaid shall be paid out of that fund ; and
- (b) where an authority maintaining a superannuation fund under the Act of 1937 has been dissolved, any transfer value which under the provisions of this paragraph would otherwise have been payable out of that fund shall be paid by the local authorities who appointed the first mentioned authority.
- (2) Where on the appointed day more than one transfer value becomes payable out of a superannuation fund by any authority under paragraph (1) of this regulation, then—
- (a) any transfer value payable may, with the Minister's consent, be paid by instalments of equal amounts spread over a period of not more than ten years after the appointed day, the first instalment to become payable on the appointed day, together with compound interest on the amount for the time being unpaid at the rate of three per cent. per annum, with half yearly rests ;
- (b) if the Minister so directs, or the authority so requests, the actuary making the next actuarial investigation of the fund after the appointed day shall certify in accordance with the provisions of the fifth schedule the liability of which the fund was relieved on the appointed day in consequence of persons who had been contributors thereto having become on that day officers of any employing authority ;

- (c) if the amount of the liability so certified is less than the amount already paid on account of transfer values, the Minister shall repay the excess to the superannuation fund, together with compound interest, calculated at the rate of three per cent. per annum, on any sum overpaid, as from the date of payment ;
  - (d) if the amount of the liability so certified exceeds the amount of the transfer values, and—
    - (i) if such transfer values were paid in a lump sum or, having been payable by instalments, have been fully paid, the authority shall pay to the Minister out of the fund the amount of the deficiency, together with compound interest thereon, calculated as aforesaid, as from the appointed day ; or
    - (ii) if such transfer values were being paid by instalments, the liability in respect of any instalments remaining unpaid shall be adjusted in such manner as the actuary shall certify to be appropriate ; and
  - (e) if nothing has been paid on account of transfer values, the amount of the liability so certified shall be paid to the Minister, either in a lump sum, together with compound interest thereon, calculated as aforesaid, as from the appointed day, or by such instalments as are mentioned in sub-paragraph (a) of this paragraph.
- (3) Where any such person as is mentioned in paragraph (1) of this regulation, had, before becoming a contributory employee or local Act contributor, been subject to the Act of 1909, and the body by whom he was last employed while subject to that Act would, if he had become entitled to a superannuation allowance as such contributory employee or local Act contributor, have been liable to contribute to that allowance, that body, or if that body has been dissolved or has ceased to exercise functions as such, the appropriate authority in relation to that body, shall pay a transfer value to the Minister in accordance with the provisions of part I of the sixth schedule.
- (4) Where the body mentioned in the last preceding paragraph would in the circumstances therein mentioned have had, in respect of any such contribution to a superannuation allowance as is therein mentioned, a right of contribution from any other body, that other body, or if that other body has been dissolved or has ceased to exercise functions as such, the appropriate authority in relation to that other body, shall also pay a transfer value to the Minister in accordance with the provisions of part II of the sixth schedule.
- (5) Where a person becomes an officer of an employing authority within twelve months after ceasing to be subject to the Act of 1909, or, in the case of a person who so ceased in order to undertake war service, within six months after the termination of that service, and without having become entitled to any benefit under the Act of 1909, other than a return of contributions, and without having become a contributory employee or local Act contributor, the body by whom he was last employed under the Act of 1909, and any other body who would have been liable to contribute towards a superannuation allowance in respect of such officer under the Act of 1909 had he become entitled to such an allowance on ceasing to be subject to the Act of 1909, or if any such body has been dissolved or has ceased to exercise functions as such, the appropriate authority in relation to such body, shall pay a transfer value to the Minister in accordance with the provisions of part III of the sixth schedule.
- (6) A transfer value payable under proviso (b) to paragraph (1) of this regulation or under the last preceding paragraph may, with the Minister's consent, be paid by instalments of equal amounts spread over a period of not more than ten years in the former case and forty years in the latter case, after the date on which the person in respect of whom it is payable became an officer, the first instalment to become payable on that date.

(7) Where any such person as is mentioned in paragraph (1) or (5) of this regulation received a return of contributions on or after ceasing to be a contributory employee, local Act contributor or subject to the Act of 1909, as the case may be, and he does not make a payment to the employing authority in accordance with proviso (a) to regulation 13 (2), the Minister shall refund any transfer value or any payment on account of a transfer value received in respect of him under this regulation.

(8) Where a transfer value under proviso (b) to paragraph (1) or under paragraph (3), (4) or (5) of this regulation becomes payable by two or more local authorities jointly, the sum payable shall be apportioned amongst those authorities in such manner as they may agree or, in default of agreement, as may be determined by the Minister.

(9) In this regulation the term "appropriate authority" in relation to a body means—

- (a) in the case of a visiting committee appointed by a local authority other than a joint mental hospitals board, the local authority ;
- (b) in the case of a visiting committee appointed by a joint mental hospitals board, the local authorities who appointed the board ;
- (c) in the case of the managers of a certified institution, the local authority who were the managers ; and
- (d) in the case of a joint mental hospitals board or any other joint board or a joint committee, the local authorities who appointed the joint board or joint committee. [2193]

48.—(1) Where before the appointed day a superannuation fund is being maintained under any superannuation scheme by or on behalf of the governing body of a voluntary hospital which by virtue of the Act will be dissolved on the appointed day, then, if the employees of that body who by virtue of contributions to that fund are participants in the benefits of that scheme, or some of those employees, will, if they remain in the employment of that body, be transferred under the Act and become officers of an employing authority, and if that scheme has been approved by the Minister under regulation 13 (3) (d) (v), that body or the persons who on their behalf are maintaining the fund shall transfer the fund to the Minister immediately before the appointed day, and the Minister shall become liable for any payment by way of return of contributions to which any participant in the benefits of the scheme becomes entitled on the appointed day.

(2) Subject to the provisions of paragraph (1) of this regulation, where a person becomes an officer of an employing authority within twelve months after ceasing to be a contributor to a scheme approved by the Minister under regulation 13 (3) (d) (v), not being a scheme for providing superannuation benefits by means of contracts or policies of insurance made or effected with any of the Life Assurance Companies, and without having become entitled to any benefit under the scheme other than a return of contributions, the body administering the scheme or any persons maintaining any fund for the purposes of the scheme or the successors in title of either that body or those persons shall, if the Minister so requires, pay to the Minister a transfer value of such amount as the Minister may determine to be actuarially equivalent to the liability of which the body administering the scheme or any such fund as aforesaid is relieved as a result of that person ceasing to be subject to the scheme and becoming an officer of an employing authority. [2194]

#### *Transfer values payable by the Minister*

49. Where a person, within twelve months after leaving employment as an officer of an employing authority or, in the case of a person who left such employment in order to undertake national service, within six months after the termination of that service, and without having become entitled to any

benefit under these regulations other than a return of contributions, becomes a contributory employee or local Act contributor, a transfer value calculated in accordance with the provisions of the seventh schedule shall be payable by the Minister to the authority maintaining the fund in relation to which the officer so becomes a contributory employee or local Act contributor, and that authority shall pay the transfer value received into that fund :

Provided that if a person, who, on or after leaving the employment of an employing authority, received a return of contributions, does not make a payment to his employer in accordance with proviso (i) to regulation 44 (1), any transfer value received in respect of him shall be refunded. [2195]

#### *Persons engaged on war service*

50.—(1) Where a person, but for any war service on which he was engaged, would have been transferred under the Act to the employment of an employing authority, he shall be deemed for the purposes of these regulations to have been so transferred if he enters the employment of that authority within six months after the termination of that service.

(2) If any such person, immediately before becoming engaged on war service, was subject to the provisions of any such enactment or scheme as is mentioned in regulation 22 (1), he shall be deemed for the purposes of these regulations to have been so subject immediately before becoming an officer of an employing authority.

(3) Where a person is engaged on war service or national service at the date of the acquisition by the Minister under section 58 of the Act of a hospital at or for the purposes of which he was employed immediately before undertaking that service, and becomes an officer of an employing authority within six months after the termination of that service, he shall be deemed for the purposes of these regulations to have been employed in such hospital at the date of its acquisition by the Minister. [2196]

#### *King Edward VII Welsh National Memorial Association Superannuation Fund*

51. The King Edward VII Welsh National Memorial Association shall, in lieu of the payment of transfer value under these regulations, transfer to the Minister immediately before the appointed day the superannuation fund maintained by them under the Act of 1937, and the Minister shall become liable as from the appointed day for any payment accruing due on or after that day on account of a superannuation allowance or gratuity payable to a person who ceased to be employed by the Association before that day, or on account of a pension payable to the spouse of any such person. [2197]

#### *Insurance Committee Officers' Superannuation Fund*

52.—(1) The trustees of the Insurance Committee Officers' Superannuation Fund shall, in lieu of the payment of transfer value under these regulations, transfer to the Minister such part of the fund as at the day appointed by His Majesty by Order in Council under section 79 (1) of the Act for the purposes of section 68 (1) (d) thereof is attributable to the provision of superannuation benefits for officers employed in England and Wales immediately before that day and to the payment of superannuation allowances to persons who have ceased to be so employed before that day or of annuities to dependants of such persons, after deducting any deficiency in the fund, other than such proportionate part thereof as may be properly attributable to any continuing liabilities of the fund.

(2) For the purpose of determining what part of the fund is to be transferred to the Minister under this regulation, a valuation shall be made by the actuary to the fund, and the cost of the valuation shall be borne by the fund.

(3) The Minister shall become liable as from the appointed day aforesaid for any payment accruing due on or after that day on account of a superannuation allowance payable out of the fund to a person who ceased to be employed in England or Wales before that day, or on account of an annuity to any of his dependants. [2198]

*Determination of questions*

53. Any question arising under these regulations as to the rights or liabilities of an officer of an employing authority or of a person claiming to be treated as such shall be determined by the Minister. [2199]

*Amendment of the Teachers Acts*

54. As from the appointed day, the provisions of the Teachers Acts shall be amended in the following manner, that is to say:—

(a) in the Act of 1925—

- (i) for proviso (a) to paragraph (b) of subsection (1) of section 2, there shall be substituted the following provision, namely  
“(a) no service in respect of which contributions are payable by virtue of regulations made under subsection (1) of section 67 of the National Health Service Act, 1946, shall be deemed to be contributory service;”
- (ii) in the proviso to subsection (2) of section 12, there shall be inserted after the words “contributory service,” the words “or if a teacher who became an officer entitled to participate in superannuation benefits provided by regulations made by the Minister of Health under subsection (1) of section 67 of the National Health Service Act, 1946, and, on or after ceasing to be such an officer, received under those regulations a return of contributions which included his teacher’s contributions, becomes employed in contributory service more than twelve months after so ceasing, or, if he so ceased in order to undertake national service, more than six months after ceasing so to serve,” and there shall be inserted after the words “repaid to him” the words “in respect of his teacher’s contributions”;
- (iii) in paragraph (a) of subsection (5) of section 12, there shall be substituted for the words “excluding any which have been previously repaid” the words “including, in the case of a teacher who has entered contributory service otherwise than under any scheme made under paragraph (a) of subsection (1) of section 21 of this Act, and otherwise than by virtue of paragraph (g) of subsection (2) of section 13 of this Act, after having been an officer entitled to participate in superannuation benefits provided by regulations made by the Minister of Health under subsection (1) of section 67 of the National Health Service Act, 1946, and who has become entitled to reckon any period of employment as contributory service by virtue of those regulations, the amount of his contributions within the meaning of those regulations, but excluding any contributions in respect of any period of recognised or contributory service which he has ceased to be entitled to reckon as such, whether by virtue of this Act or those regulations, and which he has not again become entitled so to reckon”;
- (iv) the following words shall be added at the end of paragraph (b) of subsection (5) of section 12, namely, “Provided that in the case of contributions made under such regulations as are

mentioned in the last preceding paragraph the interest shall be calculated in manner provided by those regulations up to the date on which the teacher entered contributory service, or, if he received a return of those contributions before that date, up to the date of such return "; and

- (v) in subsection (i) of section 15, there shall be inserted after the words "deemed to be revenue or expenditure" the words "and any amounts which for the purposes of any provisions relating to accounts and actuarial investigations contained in regulations made by the Minister of Health under subsection (1) of section 67 of the National Health Service Act, 1946, are treated as if they were payable by or to the Minister of Health to or by the Minister of Education";

- (b) in subsection (1) of section 1 of the Teachers (Superannuation) Act, 1945—

- (i) in paragraph (e), there shall be inserted after the words "Mental Deficiency Act, 1913," the words "or in an institution for defectives vested in the Minister of Health under the National Health Service Act, 1946 (other than an institution designated by him for defectives of violent or dangerous propensities)"; and there shall be substituted for the words "that Act" the words "the Mental Deficiency Act, 1913"; and
- (ii) in paragraph (g), there shall be substituted for the words from "a scheme in force" to the end of the paragraph the words "subsection (2) of section 51 of the National Health Service Act, 1946;". [2200]

*Special provisions affecting local authorities in relation to officers who have served as teachers*

**55.**—(1) Where an officer of an employing authority who before becoming such an officer was in contributory service under the Teachers Acts, and in whose case any period of employment in full time service before the first day of April, 1926, is, by virtue of proviso (c) to regulation 13 (2), not reckonable or reckonable at half its actual length, ceases to be employed, and any benefit other than a return of contributions becomes payable to or in respect of him under these regulations, the local education authority by whom he was last employed may pay to or in respect of him the amounts by which the said benefits would have been increased if the said service had been reckonable in full.

(2) Where an officer of an employing authority who before becoming such an officer was in contributory service under the Teachers Acts, and in whose case any period of employment before the first day of April, 1930, is, by virtue of paragraph (b) of subsection (5) of section 124 of the Local Government Act, 1929, and these regulations, reckoned as service, ceases to be employed, and any benefit becomes payable to or in respect of him under these regulations, the council to whom he was transferred by the said Act of 1929 shall, either by means of a single payment, or by means of such periodical payments as the Minister may determine, pay to the Minister such sum as may be determined by him to represent, after taking into account any sum previously paid on account of the officer under this provision, the present value of such part of the sums payable or to become payable to or in respect of him under these regulations as is attributable to the said service. [2201]

*Employment of officer to be treated as approved external service or as qualifying service under the Teachers Acts in special cases*

**56.**—(1) Where an established civil servant whose service as such is treated as approved external service under section 13 (1) (b) of the Act of

1925, or under the Teachers (Superannuation) Act, 1946, becomes an officer of an employing authority to whom regulation 13 (2) applies, his employment under that authority shall be treated for the purposes of section 13 (1) (b) of the Act of 1925 in the same manner as his service as an established civil servant.

(2) Where a person in contributory service under the Teachers Acts becomes an officer of an employing authority to whom regulation 13 (2) does not apply, his employment under that or any other employing authority, and any national service which is reckonable as service in relation to that employment, shall be treated as qualifying service for the purposes of the Teachers Acts. [2202]

*Amendment of the Act of 1937 and Local Act schemes*

57. The provisions of section 10 of the Act of 1937, and the corresponding provisions of any local Act scheme, shall have effect in relation to a contributory employee or local Act contributor who has been an officer of an employing authority as if references therein to contributions which may be returned thereunder on such an employee or contributor ceasing to be employed or dying included references to contributions and additional contributory payments made by him under or in pursuance of these regulations, in so far as any such contributions or payments have not been returned to and retained by him, and are attributable to service which might have been reckoned under the Act of 1937 or the local Act scheme, as the case may be, for the purposes of superannuation allowance in respect of the employment which he has ceased to hold or in which he has died, as the case may be. [2203]

*Amendment of the Pensions (Increase) Act, 1944*

58.—(1) The Pensions (Increase) Act, 1944, shall have effect as if a pension or injury allowance payable under these regulations were specified in Part I of the First Schedule to that Act.

(2) The said Act shall continue to have effect in relation to pensions payable under the King Edward VII Welsh National Memorial Association Acts, 1939 and 1940, or in respect of service under any insurance committee appointed under the National Health Insurance Act, 1936, (including a committee formed by a combination of insurance committees under section 94 of that Act), in respect of which the Minister becomes liable to make payments under regulation 51 or 52 (3). [2204]

*Amendment of the Superannuation Act, 1946*

59. The following words shall be added at the end of paragraph 6 of the Second Schedule to the Superannuation Act, 1946, namely, "and as if, in paragraph (b) of subsection (3) thereof, for the words "on his retirement from the service of such a local authority as aforesaid" there were substituted the words "if he retires from the service of such a local authority as aforesaid, or from employment as an officer entitled to participate in superannuation benefits provided by regulations made by the Minister of Health under subsection (1) of section 67 of the National Health Service Act, 1946," after the words "that local authority" there were inserted the words "or the Minister of Health, as the case may be," and after the words "annual superannuation allowance" there were inserted the words "or pension"." [2205]

*Repeals and Savings*

60.—(1) As from the appointed day, the enactments specified in the ninth schedule shall be repealed to the extent therein specified.



(2) Nothing in the repeal by this regulation of the Act of 1909 shall affect the rights or liabilities under that Act or the Local Government Staffs (War Service) Act, 1939, of any person who is on war service on the appointed day or of any body by whom that person had been employed under the Act of 1909, and in relation to any such person or body the provisions of the Act of 1909 and of the said Act of 1939 shall continue to have effect on and after the appointed day as if the Act of 1909 had not been repealed :

Provided that if any body by whom any such person was employed under the Act of 1909 has been dissolved or has ceased to exercise functions as such, any rights or liabilities conferred or imposed on that body by the Act of 1909 or the said Act of 1939 and preserved by this paragraph shall be deemed to have been conferred or imposed on the appropriate authority in relation to that body.

(3) Nothing in the repeal by this regulation of the provisions of the Act of 1909 and of section 11 (9) of the Mental Treatment Act, 1930, shall affect the right of any person or the legal personal representatives of any person who is or has been a commissioner of the Board of Control, and who prior to his appointment as such was a person in respect of whom contributions were paid under the Act of 1909, to receive any benefit to which he or they would have been entitled had those provisions not been repealed :

Provided that any superannuation allowance payable by any body under the foregoing provision shall, if that body has been dissolved or has ceased to exercise functions as such, be payable by the appropriate authority in relation to that body, and the body paying the superannuation allowance shall have the like right of contribution (if any) under the proviso to section 12 of the Act of 1909 as if that proviso had not been repealed, and as if references in that proviso to a visiting committee or committees were references to the appropriate authority in relation to any such committee.

(4) As from the appointed day, paragraph 2 (1) (b) of Part V of the Second Schedule to the Act of 1937 shall have effect with respect to persons who ceased to be established officers or servants under the Act of 1909 before that day, as if any obligation to contribute imposed or any right of contribution conferred by that paragraph upon a body which has been dissolved, or has ceased to exercise functions as such, were imposed or conferred upon the appropriate authority in relation to that body; and as if the proviso to section 12 of the Act of 1909 had not been repealed.

(5) Any sum payable or due under this regulation by or to two or more local authorities jointly shall be apportioned amongst those authorities in such manner as they may agree or, in default of agreement, as may be determined by the Minister.

(6) In this regulation the term "appropriate authority" in relation to a body has the same meaning as in regulation 47 (9). [2206]

## SCHEDULES

\* \* \* \* \*

Regulations 13 (9), (10),      **FOURTH SCHEDULE**  
14 (4), (5), 40 (3)

### ADDITIONAL CONTRIBUTORY PAYMENTS

1. The sum payable by an officer who desires to reckon any period of non-contributing service as contributing service shall be calculated in accordance with the provisions of paragraph 6 of this schedule, and may be paid upon the officer's notifying the employing authority in writing within three months after his becoming an officer that he intends to make a payment under this paragraph (the date of such notification being hereinafter referred to as "the material date") :—

(a) in a lump sum accompanying such notification ;

(b) partly in a lump sum, of not less than one-tenth of the sum payable, accompanying such notification, and as to the remainder, and subject as hereinafter provided, by such instalments as within three months after the material date may be agreed between the officer and the employing authority ; or

(c) wholly, subject as hereinafter provided, by such instalments as aforesaid.

2. The instalments of any sum payable under the preceding paragraph shall be of equal amounts spread over a period of not more than ten years after the material date, the first instalment to be paid within four months after the material date :

Provided that the whole of the instalments shall be payable before the date on which the officer will attain the age at which he may become eligible for a pension under these regulations on ceasing to be employed.

3. While any instalment of any sum payable under this schedule remains to be paid, the following provisions shall have effect—

(a) compound interest shall be payable as from the material date upon the amount for the time being unpaid, and shall be calculated at the rate of two-and-one-half per cent. per annum, with half-yearly rests ;

(b) if the officer becomes entitled to a pension or retiring allowance under these regulations, or if a widow's pension becomes payable thereunder on his death to his widow or if a death gratuity becomes payable in respect of him, a deduction in respect of any amount due may be made from any payments on account thereof ;

(c) if the officer becomes entitled to an injury allowance or dies without having become entitled to a pension or retiring allowance and without leaving a widow entitled to a widow's pension under these regulations, and no death gratuity is payable in respect of him, all liability in respect of the balance of the debt shall cease ;

(d) if the officer ceases to hold his employment without having become entitled to a pension or retiring allowance, then, at the expiration of twelve months, or, if the officer ceases to hold his employment in order to undertake national service, at the expiration of six months after the termination of that service, the officer shall cease to be entitled to any rights in respect of payments made by him on account of the debt, except any right to a return of the amount of such payments, and his liability in respect of the balance of the debt shall cease, unless within that period the officer, without in the meantime having become a local Act contributor in the whole-time employment of a local Act authority—

(i) enters employment in which he is an officer of an employing authority or an established civil servant, in which event, subject as hereinafter provided, his liability in respect of the balance of the debt shall continue, and the officer shall pay or repay an amount equal to any sum which may have been returned to him in respect of payments made by him on account of the debt, together with an amount equal to any income tax which was deducted from such payments in respect of such return ; or

(ii) enters employment in which he is in contributory service under the Teachers Acts, otherwise than under a scheme made under section 21

(1) (a) of the Act of 1925, or otherwise than by virtue of section 13

(2) (g) of that Act, or enters employment under a local authority in which he is a contributory employee, in which event, subject as hereinafter provided, the right to receive the balance of the debt shall be deemed to be transferred to the Minister of Education or the local authority, as the case may be, and the officer shall pay to that Minister or authority an amount equal to any sum which may have been returned to him in respect of payments made by him on account of the debt, together with an amount equal to any income tax which was deducted from such payments in respect of such return ;

(e) if the officer ceases to hold any employment by virtue of his entry into which his liability in respect of the balance of the debt has been continued in accordance with the provisions of the last preceding sub-paragraph, the provisions of that sub-paragraph shall apply, with any necessary modifications, and shall continue so to apply, whenever the officer ceases

to hold employment during which he has been making, but has not completed making, payments on account of the debt ; and

- (f) the provisions of sub-paragraphs (b) and (c) of this paragraph shall apply, with any necessary modifications, whenever the officer is employed in circumstances in which his liability in respect of the balance of the debt is continued under the provisions of sub-paragraph (d) or (e) of this paragraph.

4. Where the last preceding paragraph applies in relation to a person who at any time enters two or more employments, or who simultaneously becomes a part-time officer under the authority in whose employment he is and enters the employment of another authority, the right to receive the balance of the debt shall be apportioned between the authorities concerned in such manner as the Minister shall direct.

5. Any sum payable under this schedule by an officer of an employing authority, or by a person who has ceased to be such and has become an established civil servant, shall be paid to the employing authority for transmission to the Minister.

6.—(1) For the purpose of calculating the sum to be paid by an officer under this schedule the relative Table set out below shall be used in accordance with the provisions of this paragraph.

(2) The age and remuneration of an officer means his age at the material date and the annual remuneration on which he is paying contributions on that date :

Provided that—

- (a) if for the purposes of the foregoing provision account is required to be taken of any fees payable to an officer, other than a practitioner, in respect of any service, the amount thereof shall be taken to be the annual average of the fees payable to him in respect of that service during the three years immediately preceding the material date or, if that service was of shorter duration, such shorter period ;
- (b) references to contributions payable by any person shall include references to contributions which would have been payable by him but for any reduction in or suspension of his remuneration by reason of his absence from duty owing to ill-health or injury ;
- (c) the sum payable, whether by a practitioner or an officer other than a practitioner, in respect of any period of service as a practitioner shall be calculated by reference to the annual average of the remuneration during that period ; and
- (d) in the case of a practitioner, the sum payable in respect of any period of service in any other capacity shall be calculated by reference to the annual remuneration on which he was paying contributions at the date on which he last ceased to be employed in such capacity, or, if in that employment he was not an officer of an employing authority, the annual emoluments of that employment.

(3) The amount shown in Table I (a), I (b), II, III or IV, as the case may require, in relation to an age which corresponds with that of the officer is an amount appropriate in respect of one hundred pounds of remuneration. A total amount is to be calculated proportionately by reference to the remuneration of the officer. Such total amount is the sum payable by the officer in order to reckon as contributing service one year of the non-contributing service which he is entitled to reckon on the material date.

(4) The sum payable by an officer in order to reckon as contributing service more than one year of the non-contributing service which he is entitled to reckon at the material date is the amount calculated in accordance with sub-paragraph (3) of this paragraph, multiplied by the number of years of the said service which the officer desires so to reckon.

(5) Any sum payable by a person to whom paragraph (1) of regulation 30 applies, in respect of any period of non-contributing service of which account would be taken under paragraph (3) of regulation 30 in calculating the amount of the reduction of any pension to which the person might become entitled under these regulations, shall be reduced by the sum shown in the appropriate column of Table V in relation to an age which corresponds with that of the person at the material date, in respect of each one pound of the amount of the reduction of the pension as aforesaid in respect of that period of service, and by a proportionate sum in respect of any fraction of a pound included in the said amount.

TABLE I

(a) SERVICE OF A MALE OFFICER, NOT BEING AN OFFICER MENTIONED IN TABLE IV (OTHER THAN SERVICE AS A PRACTITIONER)

Age	Amount appropriate in respect of each £100 of remuneration	Age	Amount appropriate in respect of each £100 of remuneration
	£ s.		£ s.
Under 31 ..	5 15	48 and under 49	7 1
31 and under 32	5 16	49 .. .. 50	7 3
32 .. .. 33	5 17		
33 .. .. 34	5 18	50 .. .. 51	7 6
34 .. .. 35	5 19	51 .. .. 52	7 9
		52 .. .. 53	7 12
35 .. .. 36	6 0	53 .. .. 54	7 16
36 .. .. 37	6 1	54 .. .. 55	8 0
37 .. .. 38	6 2		
38 .. .. 39	6 3	55 .. .. 56	8 4
39 .. .. 40	6 4	56 .. .. 57	8 9
		57 .. .. 58	8 14
40 .. .. 41	6 5	58 .. .. 59	8 19
41 .. .. 42	6 7	59 .. .. 60	9 5
42 .. .. 43	6 9		
43 .. .. 44	6 11	60 and over ..	£9 5s. less six shillings for each completed year by which the officer's age exceeds sixty years.
44 .. .. 45	6 13		
45 .. .. 46	6 15		
46 .. .. 47	6 17		
47 .. .. 48	6 19		

(b) SERVICE OF A FEMALE OFFICER, NOT BEING A FEMALE OFFICER MENTIONED IN TABLE II OR IV (OTHER THAN SERVICE AS A PRACTITIONER)

	£ s.		£ s.
Under 26 ..	5 14	45 and under 46	7 15
26 and under 27	5 15	46 .. .. 47	7 19
27 .. .. 28	5 16	47 .. .. 48	8 2
28 .. .. 29	5 17	48 .. .. 49	8 6
29 .. .. 30	5 18	49 .. .. 50	8 10
30 .. .. 31	6 0		
31 .. .. 32	6 2	50 .. .. 51	8 14
32 .. .. 33	6 4	51 .. .. 52	8 18
33 .. .. 34	6 6	52 .. .. 53	9 3
34 .. .. 35	6 8	53 .. .. 54	9 7
		54 .. .. 55	9 12
35 .. .. 36	6 10		
36 .. .. 37	6 12	55 .. .. 56	9 17
37 .. .. 38	6 14	56 .. .. 57	10 2
38 .. .. 39	6 16	57 .. .. 58	10 7
39 .. .. 40	6 18	58 .. .. 59	10 13
		59 .. .. 60	10 19
40 .. .. 41	7 0		
41 .. .. 42	7 3	60 and over ..	£10 19s. less six shillings for each completed year by which the officer's age exceeds sixty years.
42 .. .. 43	7 6		
43 .. .. 44	7 9		
44 .. .. 45	7 12		

TABLE II

SERVICE OF A FEMALE NURSE (INCLUDING MENTAL HEALTH OFFICER) OR  
PHYSIOTHERAPIST, MIDWIFE OR HEALTH VISITOR

Age	Amount appropriate in respect of each £100 of remuneration	Age	Amount appropriate in respect of each £100 of remuneration
	£ s.		£ s.
Under 20 ..	6 7	42 and under 43	9 13
20 and under 21	6 14	43 " " 44	9 16
21 " " 22	7 1	44 " " 45	9 19
22 " " 23	7 8	45 " " 46	10 2
23 " " 24	7 14	46 " " 47	10 6
24 " " 25	8 0	47 " " 48	10 10
25 " " 26	8 6	48 " " 49	10 14
26 " " 27	8 11	49 " " 50	10 18
27 " " 28	8 16	50 " " 51	11 3
28 " " 29	9 0	51 " " 52	11 8
29 " " 30	9 4	52 " " 53	11 13
30 " " 31	9 7	53 " " 54	11 18
31 " " 32	9 9	54 " " 55	12 4
32 " " 33	9 10	55 " " 56	12 4
33 " " 34	9 10	56 " " 57	11 19
34 " " 35	9 10	57 " " 58	11 14
35 " " 36	9 10	58 " " 59	11 9
36 " " 37	9 10	59 " " 60	11 4
37 " " 38	9 10	60 and over ..	£10 19s. less six shillings for each completed year by which the officer's age exceeds sixty years.
38 " " 39	9 10		
39 " " 40	9 10		
40 " " 41	9 10		
41 " " 42	9 11		

TABLE III

SERVICE AS A PRACTITIONER

Age	Amount appropriate in respect of each £100 of remuneration	Age	Amount appropriate in respect of each £100 of remuneration
	£ s.		£ s.
Under 25 ..	4 17	45 and under 46	7 15
25 and under 26	5 0	46 " " 47	7 18
26 " " 27	5 3	47 " " 48	8 1
27 " " 28	5 6	48 " " 49	8 5
28 " " 29	5 9	49 " " 50	8 9
29 " " 30	5 12	50 " " 51	8 13
30 " " 31	5 15	51 " " 52	8 17
31 " " 32	5 18	52 " " 53	9 2
32 " " 33	6 1	53 " " 54	9 7
33 " " 34	6 4	54 " " 55	9 12
34 " " 35	6 7	55 " " 56	9 17
35 " " 36	6 10	56 " " 57	10 3
36 " " 37	6 12	57 " " 58	10 9
37 " " 38	6 14	58 " " 59	10 15
38 " " 39	6 16	59 " " 60	11 2
39 " " 40	6 18	60 and over ..	£11 2s. less seven shillings for each completed year by which the person's age exceeds sixty years.
40 " " 41	7 0		
41 " " 42	7 3		
42 " " 43	7 6		
43 " " 44	7 9		
44 " " 45	7 12		

TABLE IV

SERVICE OF AN OFFICER WHOSE EMPLOYMENT IS BY WAY OF MANUAL LABOUR

Age	Amount appropriate in respect of each £100 of remuneration	
	Men	Women
(1)	(2)	(3)
	£ s.	£ s.
Under 20 .. .. .	3 18	4 5
20 and under 21 .. .	3 18	4 6
21 " " 22 .. .	3 18	4 7
22 " " 23 .. .	3 18	4 8
23 " " 24 .. .	3 18	4 10
24 " " 25 .. .	3 18	4 11
25 " " 26 .. .	3 18	4 12
26 " " 27 .. .	3 19	4 12
27 " " 28 .. .	4 1	4 13
28 " " 29 .. .	4 2	4 15
29 " " 30 .. .	4 4	4 17
30 " " 31 .. .	4 6	5 0
31 " " 32 .. .	4 8	5 3
32 " " 33 .. .	4 11	5 6
33 " " 34 .. .	4 13	5 9
34 " " 35 .. .	4 16	5 12
35 " " 36 .. .	4 18	5 17
36 " " 37 .. .	5 0	6 1
37 " " 38 .. .	5 2	6 4
38 " " 39 .. .	5 5	6 8
39 " " 40 .. .	5 7	6 12
40 " " 41 .. .	5 10	6 16
41 " " 42 .. .	5 13	6 19
42 " " 43 .. .	5 16	7 3
43 " " 44 .. .	5 19	7 7
44 " " 45 .. .	6 2	7 11
45 " " 46 .. .	6 5	7 15
46 " " 47 .. .	6 8	7 19
47 " " 48 .. .	6 11	8 2
48 " " 49 .. .	6 15	8 6
49 " " 50 .. .	6 18	8 10
50 " " 51 .. .	7 2	8 14
51 " " 52 .. .	7 6	8 18
52 " " 53 .. .	7 10	9 3
53 " " 54 .. .	7 14	9 7
54 " " 55 .. .	7 18	9 12
55 " " 56 .. .	8 3	9 17
56 " " 57 .. .	8 8	10 2
57 " " 58 .. .	8 13	10 7
58 " " 59 .. .	8 19	10 13
59 " " 60 .. .	9 5	10 19
60 and over .. .	9 5	10 19
	less 6s. for each com- pleted year by which the officer's age exceeds sixty.	less 6s. for each com- pleted year by which the officer's age exceeds sixty.

TABLE V

REDUCTION OF SUM PAYABLE BY A PERSON TO WHOM REGULATION 30 (1) APPLIES

Age	Service of a male officer (including a practitioner)	Service of a female officer (including a practitioner but excluding a female Officer mentioned in Column 4)	Service of a female nurse (including Mental Health Officer) or Physiotherapist, Midwife or Health Visitor
(1)	(2)	(3)	(4)
	£ s.	£ s.	£ s.
Under 20 ..	2 0	1 0	15
20 and under 21	2 1	1 2	17
21 " " 22	2 3	1 4	19
22 " " 23	2 5	1 7	1 2
23 " " 24	2 6	1 10	1 5
24 " " 25	2 8	1 13	1 9
25 " " 26	2 10	1 17	1 14
26 " " 27	2 12	2 2	2 1
27 " " 28	2 14	2 8	2 9
28 " " 29	2 16	2 15	2 17
29 " " 30	2 18	3 2	3 6
30 " " 31	3 0	3 9	3 17
31 " " 32	3 2	3 17	4 8
32 " " 33	3 4	4 5	4 19
33 " " 34	3 6	4 12	5 9
34 " " 35	3 9	5 0	5 19
35 " " 36	3 11	5 8	6 8
36 " " 37	3 13	5 15	6 15
37 " " 38	3 15	6 3	7 1
38 " " 39	3 17	6 11	7 7
39 " " 40	4 0	6 18	7 12
40 " " 41	4 2	7 5	7 17
41 " " 42	4 4	7 13	8 2
42 " " 43	4 7	8 0	8 6
43 " " 44	4 10	8 7	8 11
44 " " 45	4 13	8 13	8 16
45 " " 46	4 16	8 19	9 1
46 " " 47	4 19	9 5	9 6
47 " " 48	5 2	9 11	9 12
48 " " 49	5 5	9 17	9 18
49 " " 50	5 9	10 4	10 4
50 " " 51	5 13	10 11	10 10
51 " " 52	5 17	10 8	10 16
52 " " 53	6 1	11 5	11 2
53 " " 54	6 5	11 12	11 9
54 " " 55	6 10	12 0	11 16
55 " " 56	6 15	12 8	12 4
56 " " 57	7 0	12 16	12 13
57 " " 58	7 6	13 5	13 2
58 " " 59	7 12	13 14	13 12
59 " " 60	7 18	14 3	14 2
60 " " 61	8 4	14 3	—
61 " " 62	8 11	14 3	—
62 " " 63	8 19	14 3	—
63 " " 64	9 8	14 3	—
64 and over ..	9 17	14 3	—



## Regulation 47 (2) (b)

## FIFTH SCHEDULE

ASCERTAINMENT OF LIABILITIES OF WHICH SUPERANNUATION FUNDS ARE RELIEVED  
ON THE APPOINTED DAY*A. Superannuation funds maintained under the Act of 1937*

1. The liability to be certified shall be such amount as is obtained by calculating in relation to such persons as are mentioned in regulation 47 (2) (b) the aggregate estimated capital values as at the appointed day of such proportion of all prospective superannuation allowances and returns of contributions in respect of which there was a contingent liability on the fund immediately before the appointed day as is attributable to service rendered before that day, and deducting therefrom the aggregate estimated capital values as at that day of any sums by way of additional contributory payments which would have been payable on and after the appointed day under the Act of 1937 by the said persons.

2. Any interest required to be calculated on any sum for the purposes of this schedule shall be calculated at the rate of three per cent. per annum.

*B. Superannuation funds maintained under local Act schemes*

3. The foregoing provisions of this schedule shall apply, with any necessary modifications. [2208]

## Regulation 47 (3), (4), (5)

## SIXTH SCHEDULE

PROVISIONS FOR THE CALCULATION OF TRANSFER VALUES PAYABLE TO THE MINISTER  
IN RESPECT OF SERVICE UNDER THE ACT OF 1909, AND DIRECTIONS FOR THE  
USE OF THE SUBJOINED TABLES IN CONNEXION THEREWITH.

## PART I

1. The transfer value payable by any body under regulation 47 (3) or the appropriate authority in relation to that body in respect of any person shall be a sum ascertained from the subjoined Table I (a) or I (b), as the case may require, in accordance with the following provisions :—

- (a) the amounts shown in columns (2) and (3) of the relative Table in relation to an age which corresponds with that of the person at the date on which he ceased to be a contributory employee or local Act contributor are to be multiplied respectively by the numbers of years, and of months aggregating less than one year, of service reckonable under the Act of 1909 which he had completed at the date on which he last ceased to be subject to that Act :

Provided that the total period of service taken into account shall not exceed forty years ;

- (b) the sum of the two products aforesaid is an amount appropriate in respect of each one hundred pounds of the annual average of the salary or wages and emoluments of a person calculated in accordance with the provisions of section 16 of the Act of 1909 ; and
- (c) a total amount is to be calculated proportionately in accordance with the provisions of section 16 of the Act of 1909 by reference to the annual average of the person's salary or wages and emoluments at the date on which he last ceased to be subject to that Act :

Provided that the transfer value shall be reduced by the amount of any transfer value payable under the next succeeding paragraph. [2209]

## PART II

2. The transfer value payable under regulation 47 (4) by any such other body as is therein mentioned or the appropriate authority in relation to that body in respect of the service of a person under that body shall be a sum ascertained from the subjoined Table I (a) or I (b), as the case may require, in accordance with the following provisions :—

- (a) the amounts shown in columns (2) and (3) of the relative Table in relation to an age which corresponds with that of the person at the date on which he ceased to be a contributory employee or local Act contributor are to be multiplied respectively by the numbers of years, and of months aggregating less than one year, of all the person's service reckonable under the Act of 1909 which he had completed under that body when he last ceased to be in their employment :

Provided that the total period of service taken into account shall not exceed forty years ;

- (b) the sum of the two products aforesaid is an amount appropriate in respect of each one hundred pounds of the annual average of the salary or wages and emoluments of a person calculated in accordance with the provisions of section 16 of the Act of 1909 ; and
- (c) a total amount is to be calculated proportionately in accordance with the provisions of section 16 of the Act of 1909 by reference to the annual average of the person's salary or wages and emoluments at the date on which he last ceased to be in the employment of that body. [2210]

## PART III

3. The transfer value payable under regulation 47 (5) in respect of any person by the body by whom the person was last employed under the Act of 1909 or the appropriate authority in relation to that body shall be a sum ascertained in accordance with the following provisions :—

- (a) such one of the subjoined Tables as is appropriate shall be used on the basis that Tables II (a) and II (b) relate to persons who when they last ceased to be subject to the Act of 1909 were officers of the first class, Tables III (a) and III (b) relate to persons who at the date aforesaid were officers of the second class, Tables IV (a) and IV (b) relate to persons who at the date aforesaid were servants of the first class and Tables V (a) and V (b) relate to persons who at the date aforesaid were servants of the second class ;
- (b) the amounts shown in columns (2) and (3) of the relative Table in relation to an age which corresponds with that of the person at the date on which he last ceased to be subject to the Act of 1909 are to be multiplied respectively by the numbers of years, and of months aggregating less than one year, of service reckonable under the Act of 1909 which he had completed at the date on which he last ceased to be subject to that Act :

Provided that the total period of service taken into account shall not exceed thirty-three years and four months in respect of a person who was an officer or servant of the first class, and forty years in respect of a person who was an officer or servant of the second class ;

- (c) the sum of the two products aforesaid is an amount appropriate in respect of each one hundred pounds of annual salary or wages and emoluments ; and

- (d) a total amount is to be calculated proportionately by reference to the annual amount of the person's salary or wages and emoluments at the date on which he last ceased to be subject to the Act of 1909 :

Provided that—

- (i) if the service completed at the date on which the person last ceased to be subject to the Act of 1909 is less than four years, the transfer value shall be a sum equal to the amount of the person's contributions under that Act which were made to the body by or in relation to whom the transfer value is payable ;
- (ii) except where proviso (i) applies, the transfer value shall be reduced by the amount of any transfer value payable under the next succeeding paragraph ; and
- (iii) the transfer value shall also be reduced by an amount equal to any sum which, when the person ceased to hold the employment in relation to which the transfer value is payable, was paid to him by way of a return of contributions, and by a further amount equal to any income tax which was deducted from his contributions in respect of such payment.

4. The transfer value payable under regulation 47 (5) by any such body as is therein mentioned who would have been liable to contribute to a superannuation allowance in the circumstances therein mentioned or the appropriate authority in relation to that body in respect of the service of a person under that body shall be a sum ascertained in accordance with the following provisions :—

- (a) such one of the subjoined Tables as is appropriate shall be used on the basis that Tables II (a) and II (b) relate to persons who when they last ceased to be subject to the Act of 1909 were officers of the first class, Tables III (a) and III (b) relate to persons who at the date aforesaid were officers of the second class, Tables IV (a) and IV (b) relate to persons who at the date aforesaid were servants of the first class and Tables V (a) and V (b) relate to persons who at the date aforesaid were servants of the second class ;
- (b) the amounts shown in columns (2) and (3) of the relative Table in relation to an age which corresponds with that of the person at the date on which he last ceased to be subject to the Act of 1909 are to be multiplied respectively by the numbers of years, and of months aggregating less than one year, of all the person's service reckonable under the Act of 1909 which he had completed under that body at the date on which he last ceased to be in their employment :

Provided that the total period of service taken into account shall not exceed thirty-three years and four months in respect of a person who was an officer or servant of the first class in his last employment under the Act of 1909, and forty years in respect of a person who in that employment was an officer or servant of the second class ;

- (c) the sum of the two products aforesaid is an amount appropriate in respect of each one hundred pounds of annual salary or wages and emoluments ; and
- (d) a total amount is to be calculated proportionately by reference to the annual amount of the person's salary or wages and emoluments at the date on which he last ceased to be in the employment of that body :

Provided that if the whole of the person's service reckonable under the Act of 1909, whether under that body or any other body, is less than four years, the transfer value shall be a sum equal to the amount of the person's contributions under that Act which were made to that body.

TABLE I

(a) MEN

Age (1)	Amount of transfer value appropriate in respect of each £100 of annual average salary or wages and emoluments in relation to each of the following completed periods of service, namely :—	
	Year (2)	Month (3)
20 and under 21 .. ..	£ s. 6 7	£ s. 11
21 " " 22 .. ..	6 11	11
22 " " 23 .. ..	6 15	11
23 " " 24 .. ..	7 0	12
24 " " 25 .. ..	7 5	12
25 " " 26 .. ..	7 10	12
26 " " 27 .. ..	7 15	13
27 " " 28 .. ..	8 0	13
28 " " 29 .. ..	8 5	14
29 " " 30 .. ..	8 10	14
30 " " 31 .. ..	8 15	15
31 " " 32 .. ..	9 0	15
32 " " 33 .. ..	9 5	15
33 " " 34 .. ..	9 10	16
34 " " 35 .. ..	9 15	16
35 " " 36 .. ..	10 0	17
36 " " 37 .. ..	10 5	17
37 " " 38 .. ..	10 10	18
38 " " 39 .. ..	10 16	18
39 " " 40 .. ..	11 2	18
40 " " 41 .. ..	11 8	19
41 " " 42 .. ..	11 14	1 0
42 " " 43 .. ..	12 0	1 0
43 " " 44 .. ..	12 6	1 0
44 " " 45 .. ..	12 13	1 1
45 " " 46 .. ..	13 0	1 2
46 " " 47 .. ..	13 7	1 2
47 " " 48 .. ..	13 15	1 3
48 " " 49 .. ..	14 3	1 4
49 " " 50 .. ..	14 9	1 4
50 " " 51 .. ..	14 14	1 4
51 " " 52 .. ..	14 18	1 5
52 " " 53 .. ..	15 2	1 5
53 " " 54 .. ..	15 5	1 5
54 " " 55 .. ..	15 9	1 6
55 " " 56 .. ..	15 12	1 6
56 " " 57 .. ..	15 16	1 6
57 " " 58 .. ..	15 19	1 7
58 " " 59 .. ..	16 3	1 7
59 " " 60 .. ..	16 7	1 7
60 " " 61 .. ..	16 10	1 8
61 " " 62 .. ..	16 12	1 8
62 " " 63 .. ..	16 14	1 8
63 " " 64 .. ..	16 15	1 8
64 and over .. ..	16 16	1 8

## (b) WOMEN

Age	Amount of transfer value appropriate in respect of each £100 of annual average salary or wages and emoluments in relation to each of the following completed periods of service, namely :—	
	Year (2)	Month (3)
(1)	£ s.	£ s.
20 and under 21 .. ..	4 1	7
21 " " 22 .. ..	4 4	7
22 " " 23 .. ..	4 8	7
23 " " 24 .. ..	4 13	8
24 " " 25 .. ..	4 18	8
25 " " 26 .. ..	5 5	9
26 " " 27 .. ..	5 13	9
27 " " 28 .. ..	6 2	10
28 " " 29 .. ..	6 12	11
29 " " 30 .. ..	7 3	12
30 " " 31 .. ..	7 14	13
31 " " 32 .. ..	8 6	14
32 " " 33 .. ..	8 18	15
33 " " 34 .. ..	9 11	16
34 " " 35 .. ..	10 4	17
35 " " 36 .. ..	10 17	18
36 " " 37 .. ..	11 9	19
37 " " 38 .. ..	12 1	1 0
38 " " 39 .. ..	12 13	1 1
39 " " 40 .. ..	13 4	1 2
40 " " 41 .. ..	13 15	1 3
41 " " 42 .. ..	14 6	1 4
42 " " 43 .. ..	14 16	1 5
43 " " 44 .. ..	15 6	1 6
44 " " 45 .. ..	15 16	1 6
45 " " 46 .. ..	16 5	1 7
46 " " 47 .. ..	16 12	1 8
47 " " 48 .. ..	16 17	1 8
48 " " 49 .. ..	17 2	1 8
49 " " 50 .. ..	17 6	1 9
50 " " 51 .. ..	17 10	1 9
51 " " 52 .. ..	17 14	1 10
52 " " 53 .. ..	17 19	1 10
53 " " 54 .. ..	18 3	1 10
54 " " 55 .. ..	18 7	1 11
55 " " 56 .. ..	18 11	1 11
56 " " 57 .. ..	18 15	1 11
57 " " 58 .. ..	19 0	1 12
58 " " 59 .. ..	19 4	1 12
59 " " 60 .. ..	19 8	1 12
60 " " 61 .. ..	19 12	1 13
61 " " 62 .. ..	19 15	1 13
62 " " 63 .. ..	19 17	1 13
63 " " 64 .. ..	19 19	1 13
64 and over .. ..	20 1	1 13

TABLE II

(a) MEN

Age (1)	Amount of transfer value appropriate in respect of each £100 of annual salary or wages and emoluments in relation to each of the following completed periods of service, namely :—	
	Year (2)	Month (3)
	£ s.	£ s.
20 and under 21 .. ..	10 4	17
21 " " 22 .. ..	10 15	18
22 " " 23 .. ..	11 6	19
23 " " 24 .. ..	11 18	1 0
24 " " 25 .. ..	12 10	1 1
25 " " 26 .. ..	13 2	1 2
26 " " 27 .. ..	13 13	1 3
27 " " 28 .. ..	14 3	1 4
28 " " 29 .. ..	14 13	1 4
29 " " 30 .. ..	15 3	1 5
30 " " 31 .. ..	15 12	1 6
31 " " 32 .. ..	16 0	1 7
32 " " 33 .. ..	16 6	1 7
33 " " 34 .. ..	16 10	1 8
34 " " 35 .. ..	16 12	1 8
35 " " 36 .. ..	16 15	1 8
36 " " 37 .. ..	16 17	1 8
37 " " 38 .. ..	16 19	1 8
38 " " 39 .. ..	17 2	1 8
39 " " 40 .. ..	17 5	1 9
40 " " 41 .. ..	17 <sup>0</sup> 7	1 9
41 " " 42 .. ..	17 10	1 9
42 " " 43 .. ..	17 14	1 10
43 " " 44 .. ..	17 18	1 10
44 " " 45 .. ..	18 2	1 10
45 " " 46 .. ..	18 6	1 10
46 " " 47 .. ..	18 10	1 11
47 " " 48 .. ..	18 15	1 11
48 " " 49 .. ..	19 0	1 12
49 " " 50 .. ..	19 6	1 12
50 " " 51 .. ..	19 11	1 13
51 " " 52 .. ..	19 15	1 13
52 " " 53 .. ..	19 18	1 13
53 " " 54 .. ..	20 0	1 13
54 " " 55 .. ..	20 1	1 13
55 " " 56 .. ..	20 2	1 14
56 " " 57 .. ..	20 2	1 14
57 " " 58 .. ..	20 2	1 14
58 " " 59 .. ..	20 2	1 14
59 " " 60 .. ..	20 2	1 14
60 and over .. ..	20 3	1 14

## (b) WOMEN

Age (1)	Amount of transfer value appropriate in respect of each £100 of annual salary or wages and emoluments in relation to each of the following completed periods of service, namely :—	
	Year (2)	Month (3)
	£ s.	£ s.
20 and under 21 .. ..	3 12	6
21 " " 22 .. ..	4 0	7
22 " " 23 .. ..	4 9	7
23 " " 24 .. ..	4 19	8
24 " " 25 .. ..	5 11	9
25 " " 26 .. ..	6 5	10
26 " " 27 .. ..	7 1	12
27 " " 28 .. ..	8 0	13
28 " " 29 .. ..	9 2	15
29 " " 30 .. ..	10 6	17
30 " " 31 .. ..	11 10	19
31 " " 32 .. ..	12 13	1 1
32 " " 33 .. ..	13 14	1 3
33 " " 34 .. ..	14 14	1 4
34 " " 35 .. ..	15 13	1 6
35 " " 36 .. ..	16 11	1 8
36 " " 37 .. ..	17 8	1 9
37 " " 38 .. ..	18 3	1 10
38 " " 39 .. ..	18 16	1 11
39 " " 40 .. ..	19 8	1 12
40 " " 41 .. ..	20 0	1 13
41 " " 42 .. ..	20 12	1 14
42 " " 43 .. ..	21 4	1 15
43 " " 44 .. ..	21 16	1 16
44 " " 45 .. ..	22 8	1 17
45 " " 46 .. ..	22 18	1 18
46 " " 47 .. ..	23 6	1 19
47 " " 48 .. ..	23 11	1 19
48 " " 49 .. ..	23 14	2 0
49 " " 50 .. ..	23 16	2 0
50 " " 51 .. ..	23 17	2 0
51 " " 52 .. ..	23 18	2 0
52 " " 53 .. ..	23 19	2 0
53 " " 54 .. ..	23 19	2 0
54 " " 55 .. ..	24 0	2 0
55 " " 56 .. ..	24 0	2 0
56 " " 57 .. ..	24 0	2 0
57 " " 58 .. ..	24 0	2 0
58 and over .. ..	24 1	2 0



TABLE III

(a) MEN

Age (1)	Amount of transfer value appropriate in respect of each £100 of annual salary or wages and emoluments in relation to each of the following completed periods of service, namely :—	
	Year (2)	Month (3)
	£ s.	£ s.
20 and under 21 .. ..	8 12	14
21 " " 22 .. ..	8 12	14
22 " " 23 .. ..	8 12	14
23 " " 24 .. ..	8 12	14
24 " " 25 .. ..	8 13	14
25 " " 26 .. ..	8 14	14
26 " " 27 .. ..	8 15	15
27 " " 28 .. ..	8 17	15
28 " " 29 .. ..	8 19	15
29 " " 30 .. ..	9 1	15
30 " " 31 .. ..	9 3	15
31 " " 32 .. ..	9 5	15
32 " " 33 .. ..	9 7	16
33 " " 34 .. ..	9 9	16
34 " " 35 .. ..	9 12	16
35 " " 36 .. ..	9 15	16
36 " " 37 .. ..	9 18	16
37 " " 38 .. ..	10 1	17
38 " " 39 .. ..	10 3	17
39 " " 40 .. ..	10 5	17
40 " " 41 .. ..	10 7	17
41 " " 42 .. ..	10 9	17
42 " " 43 .. ..	10 12	18
43 " " 44 .. ..	10 16	18
44 " " 45 .. ..	11 0	18
45 " " 46 .. ..	11 4	19
46 " " 47 .. ..	11 8	19
47 " " 48 .. ..	11 13	19
48 " " 49 .. ..	11 18	1 0
49 " " 50 .. ..	12 3	1 0
50 " " 51 .. ..	12 9	1 1
51 " " 52 .. ..	12 15	1 1
52 " " 53 .. ..	13 1	1 2
53 " " 54 .. ..	13 7	1 2
54 " " 55 .. ..	13 14	1 3
55 " " 56 .. ..	14 2	1 4
56 " " 57 .. ..	14 9	1 4
57 " " 58 .. ..	14 17	1 5
58 " " 59 .. ..	15 6	1 6
59 " " 60 .. ..	15 15	1 6
60 " " 61 .. ..	16 2	1 7
61 " " 62 .. ..	16 7	1 7
62 " " 63 .. ..	16 11	1 8
63 " " 64 .. ..	16 14	1 8
64 and over .. ..	16 16	1 8

## (b) WOMEN

Age (1)	Amount of transfer value appropriate in respect of each £100 of annual salary or wages and emoluments in relation to each of the following completed periods of service, namely :—	
	Year (2)	Month (3)
20 and under 21 .. ..	£ s. 2 11	£ s. 4
21 " " 22 .. ..	2 17	5
22 " " 23 .. ..	3 3	5
23 " " 24 .. ..	3 10	6
24 " " 25 .. ..	3 17	6
25 " " 26 .. ..	4 6	7
26 " " 27 .. ..	4 16	8
27 " " 28 .. ..	5 8	9
28 " " 29 .. ..	6 2	10
29 " " 30 .. ..	6 17	11
30 " " 31 .. ..	7 11	13
31 " " 32 .. ..	8 4	14
32 " " 33 .. ..	8 16	15
33 " " 34 .. ..	9 8	16
34 " " 35 .. ..	9 19	17
35 " " 36 .. ..	10 9	17
36 " " 37 .. ..	10 18	18
37 " " 38 .. ..	11 6	19
38 " " 39 .. ..	11 14	1 0
39 " " 40 .. ..	12 2	1 0
40 " " 41 .. ..	12 10	1 1
41 " " 42 .. ..	12 19	1 2
42 " " 43 .. ..	13 8	1 2
43 " " 44 .. ..	13 17	1 3
44 " " 45 .. ..	14 5	1 4
45 " " 46 .. ..	14 13	1 4
46 " " 47 .. ..	15 0	1 5
47 " " 48 .. ..	15 6	1 6
48 " " 49 .. ..	15 12	1 6
49 " " 50 .. ..	15 18	1 6
50 " " 51 .. ..	16 4	1 7
51 " " 52 .. ..	16 10	1 8
52 " " 53 .. ..	16 16	1 8
53 " " 54 .. ..	17 3	1 9
54 " " 55 .. ..	17 9	1 9
55 " " 56 .. ..	17 15	1 10
56 " " 57 .. ..	18 2	1 10
57 " " 58 .. ..	18 8	1 11
58 " " 59 .. ..	18 15	1 11
59 " " 60 .. ..	19 1	1 12
60 " " 61 .. ..	19 6	1 12
61 " " 62 .. ..	19 11	1 13
62 " " 63 .. ..	19 15	1 13
63 " " 64 .. ..	19 18	1 13
64 and over .. ..	20 1	1 13

TABLE IV

(a) MEN

Age  (1)	Amount of transfer value appropriate in respect of each £100 of annual salary or wages and emoluments in relation to each of the following completed periods of service, namely :—	
	Year (2)	Month (3)
	£ s.	£ s.
20 and under 21 .. ..	5 7	9
21 " " 22 .. ..	5 14	10
22 " " 23 .. ..	6 1	10
23 " " 24 .. ..	6 8	11
24 " " 25 .. ..	6 15	11
25 " " 26 .. ..	7 3	12
26 " " 27 .. ..	7 12	13
27 " " 28 .. ..	8 1	13
28 " " 29 .. ..	8 11	14
29 " " 30 .. ..	9 1	15
30 " " 31 .. ..	9 11	16
31 " " 32 .. ..	10 1	17
32 " " 33 .. ..	10 12	18
33 " " 34 .. ..	11 2	18
34 " " 35 .. ..	11 12	19
35 " " 36 .. ..	12 2	1 0
36 " " 37 .. ..	12 12	1 1
37 " " 38 .. ..	13 2	1 2
38 " " 39 .. ..	13 11	1 3
39 " " 40 .. ..	13 19	1 3
40 " " 41 .. ..	14 7	1 4
41 " " 42 .. ..	14 14	1 4
42 " " 43 .. ..	15 1	1 5
43 " " 44 .. ..	15 7	1 6
44 " " 45 .. ..	15 14	1 6
45 " " 46 .. ..	16 1	1 7
46 " " 47 .. ..	16 9	1 7
47 " " 48 .. ..	16 17	1 8
48 " " 49 .. ..	17 6	1 9
49 " " 50 .. ..	17 15	1 10
50 " " 51 .. ..	18 3	1 10
51 " " 52 .. ..	18 8	1 11
52 " " 53 .. ..	18 12	1 11
53 " " 54 .. ..	18 16	1 11
54 " " 55 .. ..	18 19	1 12
55 " " 56 .. ..	19 2	1 12
56 " " 57 .. ..	19 5	1 12
57 " " 58 .. ..	19 8	1 12
58 " " 59 .. ..	19 11	1 13
59 " " 60 .. ..	19 14	1 13
60 " " 61 .. ..	19 17	1 13
61 " " 62 .. ..	19 19	1 13
62 " " 63 .. ..	20 1	1 13
63 " " 64 .. ..	20 2	1 14
64 and over .. ..	20 3	1 14

## (b) WOMEN

Age (1)	Amount of transfer value appropriate in respect of each £100 of annual salary or wages and emoluments in relation to each of the following completed periods of service, namely :—	
	Year (2)	Month (3)
20 and under 21 .. ..	£ s. 2 4	£ s. 4
21 " " 22 .. ..	2 12	4
22 " " 23 .. ..	3 0	5
23 " " 24 .. ..	3 8	6
24 " " 25 .. ..	3 16	6
25 " " 26 .. ..	4 5	7
26 " " 27 .. ..	4 16	8
27 " " 28 .. ..	5 10	9
28 " " 29 .. ..	6 5	10
29 " " 30 .. ..	7 1	12
30 " " 31 .. ..	7 17	13
31 " " 32 .. ..	8 14	14
32 " " 33 .. ..	9 10	16
33 " " 34 .. ..	10 6	17
34 " " 35 .. ..	11 2	18
35 " " 36 .. ..	11 18	1 0
36 " " 37 .. ..	12 14	1 1
37 " " 38 .. ..	13 10	1 2
38 " " 39 .. ..	14 6	1 4
39 " " 40 .. ..	15 2	1 5
40 " " 41 .. ..	15 17	1 6
41 " " 42 .. ..	16 11	1 8
42 " " 43 .. ..	17 4	1 9
43 " " 44 .. ..	17 17	1 10
44 " " 45 .. ..	18 9	1 11
45 " " 46 .. ..	19 0	1 12
46 " " 47 .. ..	19 9	1 12
47 " " 48 .. ..	19 16	1 13
48 " " 49 .. ..	20 2	1 14
49 " " 50 .. ..	20 7	1 14
50 " " 51 .. ..	20 13	1 14
51 " " 52 .. ..	20 18	1 15
52 " " 53 .. ..	21 4	1 15
53 " " 54 .. ..	21 10	1 16
54 " " 55 .. ..	21 16	1 16
55 " " 56 .. ..	22 1	1 17
56 " " 57 .. ..	22 7	1 17
57 " " 58 .. ..	22 12	1 18
58 " " 59 .. ..	22 18	1 18
59 " " 60 .. ..	23 3	1 19
60 " " 61 .. ..	23 8	1 19
61 " " 62 .. ..	23 12	1 19
62 " " 63 .. ..	23 16	2 0
63 " " 64 .. ..	23 19	2 0
64 and over .. ..	24 1	2 0

TABLE V

(a) MEN

Age (1)	Amount of transfer value appropriate in respect of each £100 of annual salary or wages and emoluments in relation to each of the following completed periods of service, namely :—	
	Year (2)	Month (3)
	£ s.	£ s.
20 and under 21 .. ..	3 13	6
21 " " 22 .. ..	3 17	6
22 " " 23 .. ..	4 1	7
23 " " 24 .. ..	4 6	7
24 " " 25 .. ..	4 11	8
25 " " 26 .. ..	4 16	8
26 " " 27 .. ..	5 2	8
27 " " 28 .. ..	5 8	9
28 " " 29 .. ..	5 14	10
29 " " 30 .. ..	6 0	10
30 " " 31 .. ..	6 7	11
31 " " 32 .. ..	6 14	11
32 " " 33 .. ..	7 1	12
33 " " 34 .. ..	7 8	12
34 " " 35 .. ..	7 15	13
35 " " 36 .. ..	8 2	14
36 " " 37 .. ..	8 8	14
37 " " 38 .. ..	8 14	14
38 " " 39 .. ..	9 0	15
39 " " 40 .. ..	9 6	16
40 " " 41 .. ..	9 11	16
41 " " 42 .. ..	9 16	16
42 " " 43 .. ..	10 0	17
43 " " 44 .. ..	10 4	17
44 " " 45 .. ..	10 8	17
45 " " 46 .. ..	10 13	18
46 " " 47 .. ..	10 18	18
47 " " 48 .. ..	11 3	19
48 " " 49 .. ..	11 9	19
49 " " 50 .. ..	11 15	1 0
50 " " 51 .. ..	12 1	1 0
51 " " 52 .. ..	12 8	1 1
52 " " 53 .. ..	12 15	1 1
53 " " 54 .. ..	13 2	1 2
54 " " 55 .. ..	13 9	1 2
55 " " 56 .. ..	13 17	1 3
56 " " 57 .. ..	14 5	1 4
57 " " 58 .. ..	14 14	1 4
58 " " 59 .. ..	15 3	1 5
59 " " 60 .. ..	15 13	1 6
60 " " 61 .. ..	16 0	1 7
61 " " 62 .. ..	16 6	1 7
62 " " 63 .. ..	16 11	1 8
63 " " 64 .. ..	16 14	1 8
64 and over .. ..	16 16	1 8

## (b) WOMEN

Age (1)	Amount of transfer value appropriate in respect of each £100 of annual salary or wages and emoluments in relation to each of the following completed periods of service, namely :—	
	Year (2)	Month (3)
	£ s.	£ s.
20 and under 21 .. ..	1 15	3
21 " " 22 .. ..	2 1	3
22 " " 23 .. ..	2 7	4
23 " " 24 .. ..	2 12	4
24 " " 25 .. ..	2 17	5
25 " " 26 .. ..	3 3	5
26 " " 27 .. ..	3 10	6
27 " " 28 .. ..	3 19	7
28 " " 29 .. ..	4 9	7
29 " " 30 .. ..	4 19	8
30 " " 31 .. ..	5 9	9
31 " " 32 .. ..	5 19	10
32 " " 33 .. ..	6 9	11
33 " " 34 .. ..	6 19	12
34 " " 35 .. ..	7 9	12
35 " " 36 .. ..	8 0	13
36 " " 37 .. ..	8 11	14
37 " " 38 .. ..	9 1	15
38 " " 39 .. ..	9 12	16
39 " " 40 .. ..	10 3	17
40 " " 41 .. ..	10 13	18
41 " " 42 .. ..	11 3	19
42 " " 43 .. ..	11 12	19
43 " " 44 .. ..	12 1	1 0
44 " " 45 .. ..	12 10	1 1
45 " " 46 .. ..	12 18	1 2
46 " " 47 .. ..	13 5	1 2
47 " " 48 .. ..	13 12	1 3
48 " " 49 .. ..	13 19	1 3
49 " " 50 .. ..	14 7	1 4
50 " " 51 .. ..	14 14	1 4
51 " " 52 .. ..	15 2	1 5
52 " " 53 .. ..	15 11	1 6
53 " " 54 .. ..	16 0	1 7
54 " " 55 .. ..	16 9	1 7
55 " " 56 .. ..	16 17	1 8
56 " " 57 .. ..	17 6	1 9
57 " " 58 .. ..	17 15	1 10
58 " " 59 .. ..	18 4	1 10
59 " " 60 .. ..	18 12	1 11
60 " " 61 .. ..	19 0	1 12
61 " " 62 .. ..	19 7	1 12
62 " " 63 .. ..	19 13	1 13
63 " " 64 .. ..	19 18	1 13
64 and over .. ..	20 1	1 13

## Regulation 49

## SEVENTH SCHEDULE

PROVISIONS FOR THE CALCULATION OF TRANSFER VALUES PAYABLE BY THE MINISTER,  
AND DIRECTIONS FOR THE USE OF THE SUBJOINED TABLES IN CONNEXION  
THEREWITH.

1. In this schedule, the following expressions, unless the context otherwise requires, have the meanings hereby assigned to them—

“the material date” in relation to any person in respect of whom a transfer value is being calculated means the date upon which he ceased to hold his employment under the employing authority ;

“remuneration” in relation to any person, other than a practitioner, means the annual remuneration of his employment under the employing authority on which contributions were payable by him on the material date, and in relation to a practitioner means the annual average of his remuneration in respect of all periods of service as a practitioner :

Provided that—

- (a) if, for the purposes of the foregoing definition, account is required to be taken of any fees payable to a person, other than a practitioner, in respect of any employment, the amount thereof shall be taken to be the annual average of the fees payable to him in respect of that employment during the three years immediately preceding the material date or, if that employment was of shorter duration, such shorter period ;
- (b) references in the foregoing definition to contributions payable by any person shall include references to contributions which would have been payable by him but for any reduction in or suspension of his remuneration by reason of his absence from duty owing to ill-health or injury ;
- (c) in the case of a person who has ceased to hold a single employment under an employing authority and has entered two or more part-time employments in which he is an officer of the same or any other employing authority, a contributory employee or local Act contributor, the expression “remuneration” shall, in relation to each part-time employment, be construed as meaning such proportion of the person’s remuneration on the material date as the annual remuneration or emoluments of that part-time employment bears to the aggregate amount of the annual remuneration or emoluments of the part-time employments ;

“service” in relation to a person who in the employment he has ceased to hold was in the whole-time employment of a single employing authority means, in respect of any period of previous part-time employment, whole-time service for a proportionately reduced period ; and

“contributing service” in relation to any period of service in respect of which a person was in the course of making but had not completed making additional contributory payments shall, if that person in the employment he has entered is a local Act contributor, be construed as meaning service of one-half the actual length of that period of service.

2. The transfer value payable in respect of any person shall be the aggregate of the sums respectively calculated in accordance with the provisions of paragraphs 4, 5 and 6 of this schedule :

Provided that—

- (a) in the case of a person, not being a practitioner, whose service includes service in that capacity, separate transfer values shall be calculated in respect of his service in the two capacities, by reference to his remuneration as such person and his remuneration as a practitioner respectively ;
- (b) in the case of a practitioner whose service includes service otherwise than in that capacity, separate transfer values shall be calculated in respect of his service in the two capacities, as if in relation to his service otherwise than in the capacity of a practitioner the material date for the purpose of ascertaining his remuneration was the date on which he ceased to hold his last employment before becoming a practitioner, and his remuneration was the annual remuneration of the employment on



which contributions were payable by him on that date, or, if in that employment he was not an officer of an employing authority, the annual emoluments of that employment ;

- (c) in the case of a person whose contributing service, together with his non-contributing service (if any) reckoned at half its actual length, exceeds forty years, the calculation required to be made by reference to his contributing service and non-contributing service shall be made by reference to forty years contributing service, and if he is such a person as is mentioned in proviso (a) or (b) to this paragraph, his service as a practitioner and his service in any other capacity shall be reduced proportionately to their actual lengths, any non-contributing service being reckoned at half its actual length ;
- (d) the transfer value payable shall be reduced by—
  - (i) an amount equal to any sum which, when the person ceased to hold the employment in relation to which the transfer value is payable, was paid to him by way of a return of contributions, and by a further amount equal to any income tax which was deducted from his contributions in respect of such payment ; and
  - (ii) an amount equal to the balance of any debt the right to receive which, pursuant to the provisions of the fourth schedule to these regulations, is deemed to be transferred to the local authority whose employment the person has entered ; and
- (e) if in relation to the employment which the person has ceased to hold he was in the course of making but had not completed making additional contributory payments, and if in the employment he has entered he is a local Act contributor, the transfer value shall be increased by an amount equal to the aggregate amount of the additional contributory payments so made, except to the extent that such amount may have been returned to the person or any sum may have been deducted on account of income tax from such amount in respect of such return.

3. If after a transfer value has been paid in respect of a person who has become a contributory employee or local Act contributor in the part-time employment of a local authority, that person, within twelve months after the material date, or in the case of a person who ceased to hold his former employment in order to undertake national service, within six months after the termination of that service, while retaining that part-time employment enters other part-time employment in which he is an officer of an employing authority, a contributory employee or local Act contributor, he shall be treated for the purposes of this schedule as if he had simultaneously become such an officer, employee or contributor in each of such part-time employments, and the transfer value already paid shall be adjusted accordingly.

4.—(1) The sum to be calculated by reference to a person's contributing service shall be ascertained in accordance with the provisions of this paragraph.

(2) The amount shown in column (2) of the relative Table set out below in relation to an age which corresponds with that of the person at the material date is to be multiplied by the number of years of contributing service completed on the material date.

(3) The product aforesaid is an amount appropriate in respect of one hundred pounds of remuneration.

(4) A total amount is to be calculated proportionately by reference to the person's remuneration.

5.—(1) The sum to be calculated by reference to a person's non-contributing service shall be ascertained in accordance with the provisions of this paragraph.

(2) The amount shown in column (3) of the relative Table set out below in relation to an age which corresponds with that of the person at the material date is to be multiplied by the number of years of non-contributing service completed on the material date.

(3) The product aforesaid is an amount appropriate in respect of one hundred pounds of remuneration.

(4) A total amount is to be calculated proportionately by reference to the person's remuneration.

6. In the case of a person to whom paragraph (2) of regulation 30 applied

immediately before the material date, any sum calculated under paragraph 4 or 5 of this schedule in respect of any period of service of which account would have been taken under paragraph (3) of regulation 30 in calculating the amount of the reduction of any pension to which the person might have become entitled under these regulations shall be reduced by the sum shown in the appropriate column of Table V set out in the fourth schedule to these regulations in relation to an age which corresponds with that of the person at the material date, in respect of each one pound of the amount of the reduction of the pension as aforesaid in respect of that period of service, and by a proportionate sum in respect of any fraction of a pound included in the said amount.

TABLE I

(a) SERVICE OF A MALE OFFICER, NOT BEING AN OFFICER MENTIONED IN TABLE IV  
(OTHER THAN SERVICE AS A PRACTITIONER)

Age	Amount of transfer value appropriate in respect of each £100 of remuneration in relation to each completed year of service, namely :—	
	Contributing Service	Non-contributing Service
(1)	(2)	(3)
	£ s.	£ s.
Under 30 .. ..	11 3	5 11
30 and under 31 .. ..	11 5	5 12
31 " " 32 .. ..	11 7	5 13
32 " " 33 .. ..	11 9	5 14
33 " " 34 .. ..	11 11	5 15
34 " " 35 .. ..	11 13	5 16
35 " " 36 .. ..	11 15	5 17
36 " " 37 .. ..	11 17	5 18
37 " " 38 .. ..	11 19	5 19
38 " " 39 .. ..	12 1	6 0
39 " " 40 .. ..	12 4	6 2
40 " " 41 .. ..	12 7	6 3
41 " " 42 .. ..	12 10	6 5
42 " " 43 .. ..	12 14	6 7
43 " " 44 .. ..	12 18	6 9
44 " " 45 .. ..	13 2	6 11
45 " " 46 .. ..	13 6	6 13
46 " " 47 .. ..	13 10	6 15
47 " " 48 .. ..	13 14	6 17
48 " " 49 .. ..	13 19	6 19
49 " " 50 .. ..	14 4	7 2
50 " " 51 .. ..	14 8	7 4
51 " " 52 .. ..	14 11	7 5
52 " " 53 .. ..	14 13	7 6
53 " " 54 .. ..	14 15	7 7
54 " " 55 .. ..	14 18	7 9
55 " " 56 .. ..	15 1	7 10
56 " " 57 .. ..	15 4	7 12
57 " " 58 .. ..	15 7	7 13
58 " " 59 .. ..	15 10	7 15
59 " " 60 .. ..	15 13	7 16
60 and over .. ..	15 14	7 17

(b) SERVICE OF A FEMALE OFFICER, NOT BEING A FEMALE OFFICER MENTIONED  
IN TABLE II OR IV (OTHER THAN SERVICE AS A PRACTITIONER)

Age	Amount of transfer value appropriate in respect of each £100 of remuneration in relation to each completed year of service, namely :—	
	Contributing Service	Non-contributing Service
(1)	(2)	(3)
	£ s.	£ s.
Under 20 .. ..	7 16	2 2
20 and under 21 .. ..	7 17	2 3
21 .. .. 22 .. ..	7 18	2 5
22 .. .. 23 .. ..	7 19	2 7
23 .. .. 24 .. ..	8 0	2 9
24 .. .. 25 .. ..	8 2	2 12
25 .. .. 26 .. ..	8 5	2 15
26 .. .. 27 .. ..	8 9	2 19
27 .. .. 28 .. ..	8 14	3 4
28 .. .. 29 .. ..	9 0	3 9
29 .. .. 30 .. ..	9 7	3 15
30 .. .. 31 .. ..	9 14	4 0
31 .. .. 32 .. ..	10 2	4 6
32 .. .. 33 .. ..	10 9	4 11
33 .. .. 34 .. ..	10 17	4 17
34 .. .. 35 .. ..	11 4	5 2
35 .. .. 36 .. ..	11 11	5 7
36 .. .. 37 .. ..	11 18	5 12
37 .. .. 38 .. ..	12 5	5 17
38 .. .. 39 .. ..	12 13	6 2
39 .. .. 40 .. ..	13 0	6 7
40 .. .. 41 .. ..	13 8	6 12
41 .. .. 42 .. ..	13 15	6 17
42 .. .. 43 .. ..	14 3	7 1
43 .. .. 44 .. ..	14 10	7 5
44 .. .. 45 .. ..	14 17	7 8
45 .. .. 46 .. ..	15 4	7 12
46 .. .. 47 .. ..	15 11	7 15
47 .. .. 48 .. ..	15 18	7 19
48 .. .. 49 .. ..	16 6	8 3
49 .. .. 50 .. ..	16 13	8 6
50 .. .. 51 .. ..	16 19	8 9
51 .. .. 52 .. ..	17 5	8 12
52 .. .. 53 .. ..	17 10	8 15
53 .. .. 54 .. ..	17 15	8 17
54 .. .. 55 .. ..	17 19	8 19
55 .. .. 56 .. ..	18 3	9 1
56 .. .. 57 .. ..	18 7	9 3
57 .. .. 58 .. ..	18 11	9 5
58 .. .. 59 .. ..	18 15	9 7
59 .. .. 60 .. ..	18 18	9 9
60 and over .. ..	19 0	9 10

TABLE II

SERVICE OF A FEMALE NURSE (INCLUDING MENTAL HEALTH OFFICER) OR PHYSIOTHERAPIST, MIDWIFE OR HEALTH VISITOR WHO BECOMES EMPLOYED AS A FEMALE NURSE, MIDWIFE OR HEALTH VISITOR.

Age	Amount of transfer value appropriate in respect of each £100 of remuneration in relation to each completed year of service, namely :—	
	Contributing Service	Non-contributing Service
(1)	(2)	(3)
	£ s.	£ s.
Under 20 .. ..	8 5	2 2
20 and under 21 .. ..	8 6	2 3
21 " " 22 .. ..	8 7	2 5
22 " " 23 .. ..	8 9	2 7
23 " " 24 .. ..	8 13	2 10
24 " " 25 .. ..	9 0	2 16
25 " " 26 .. ..	9 11	3 3
26 " " 27 .. ..	10 5	3 12
27 " " 28 .. ..	11 1	4 2
28 " " 29 .. ..	11 19	4 14
29 " " 30 .. ..	12 19	5 8
30 " " 31 .. ..	14 1	6 3
31 " " 32 .. ..	15 5	7 0
32 " " 33 .. ..	16 7	7 15
33 " " 34 .. ..	17 4	8 6
34 " " 35 .. ..	17 13	8 12
35 " " 36 .. ..	17 18	8 16
36 " " 37 .. ..	18 1	8 19
37 " " 38 .. ..	18 2	9 1
38 " " 39 .. ..	18 3	9 1
39 " " 40 .. ..	18 5	9 2
40 " " 41 .. ..	18 7	9 3
41 " " 42 .. ..	18 10	9 5
42 " " 43 .. ..	18 15	9 7
43 " " 44 .. ..	19 1	9 10
44 " " 45 .. ..	19 7	9 13
45 " " 46 .. ..	19 14	9 17
46 " " 47 .. ..	20 2	10 1
47 " " 48 .. ..	20 11	10 5
48 " " 49 .. ..	20 19	10 9
49 " " 50 .. ..	21 8	10 14
50 " " 51 .. ..	21 18	10 19
51 " " 52 .. ..	22 8	11 4
52 " " 53 .. ..	22 19	11 9
53 " " 54 .. ..	23 10	11 15
54 and over .. ..	24 2	12 1

TABLE III  
SERVICE AS A PRACTITIONER

Age	Amount appropriate in respect of each £100 of remuneration	Age	Amount appropriate in respect of each £100 of remuneration
	£ s.		£ s.
Under 25 ..	8 4	45 and under 46	12 15
25 and under 26	8 12	46 " " 47	13 0
26 " " 27	8 19	47 " " 48	13 5
27 " " 28	9 5	48 " " 49	13 11
28 " " 29	9 10	49 " " 50	13 16
29 " " 30	9 15	50 " " 51	14 2
30 " " 31	10 0	51 " " 52	14 8
31 " " 32	10 5	52 " " 53	14 14
32 " " 33	10 10	53 " " 54	15 1
33 " " 34	10 14	54 " " 55	15 8
34 " " 35	10 18	55 " " 56	15 15
35 " " 36	11 2	56 " " 57	16 2
36 " " 37	11 5	57 " " 58	16 9
37 " " 38	11 8	58 " " 59	16 16
38 " " 39	11 10	59 " " 60	17 3
39 " " 40	11 13	60 " " 61	17 10
40 " " 41	11 16	61 " " 62	17 17
41 " " 42	12 0	62 " " 63	18 4
42 " " 43	12 3	63 " " 64	18 12
43 " " 44	12 7	64 and over ..	19 0
44 " " 45	12 11		

TABLE IV

(a) SERVICE OF A MALE OFFICER WHOSE EMPLOYMENT IS BY WAY OF MANUAL LABOUR

Age	Amount of transfer value appropriate in respect of each £100 of remuneration in relation to each completed year of service, namely :—	
	Contributing Service	Non-contributing Service
(1)	(2)	(3)
	£ s.	£ s.
Under 26 .. ..	7 16	3 18
26 and under 27 .. ..	7 18	3 19
27 " " 28 .. ..	8 1	4 0
28 " " 29 .. ..	8 4	4 2
29 " " 30 .. ..	8 8	4 4
30 " " 31 .. ..	8 12	4 6
31 " " 32 .. ..	8 16	4 8
32 " " 33 .. ..	9 1	4 10
33 " " 34 .. ..	9 5	4 12
34 " " 35 .. ..	9 10	4 15
35 " " 36 .. ..	9 14	4 17
36 " " 37 .. ..	9 19	4 19
37 " " 38 .. ..	10 3	5 1
38 " " 39 .. ..	10 8	5 4
39 " " 40 .. ..	10 13	5 6

TABLE IV—*continued*(a) SERVICE OF A MALE OFFICER WHOSE EMPLOYMENT IS BY WAY OF MANUAL LABOUR—*continued*

Age	Amount of transfer value appropriate in respect of each £100 of remuneration in relation to each completed year of service, namely:—	
	Contributing Service	Non-contributing Service
(1)	(2)	(3)
	£ s.	£ s.
40 and under 41 .. ..	10 18	5 9
41 .. .. 42 .. ..	11 4	5 12
42 .. .. 43 .. ..	11 9	5 14
43 .. .. 44 .. ..	11 15	5 17
44 .. .. 45 .. ..	12 1	6 0
45 .. .. 46 .. ..	12 7	6 3
46 .. .. 47 .. ..	12 14	6 7
47 .. .. 48 .. ..	13 0	6 10
48 .. .. 49 .. ..	13 6	6 13
49 .. .. 50 .. ..	13 12	6 16
50 .. .. 51 .. ..	13 18	6 19
51 .. .. 52 .. ..	14 3	7 1
52 .. .. 53 .. ..	14 8	7 4
53 .. .. 54 .. ..	14 12	7 6
54 .. .. 55 .. ..	14 15	7 7
55 .. .. 56 .. ..	14 18	7 9
56 .. .. 57 .. ..	15 2	7 11
57 .. .. 58 .. ..	15 5	7 12
58 .. .. 59 .. ..	15 8	7 14
59 .. .. 60 .. ..	15 12	7 16
60 and over .. ..	15 14	7 17

(b) SERVICE OF A FEMALE OFFICER WHOSE EMPLOYMENT IS BY WAY OF MANUAL LABOUR

Under 20 .. ..	5 6	1 1
20 and under 21 .. ..	5 9	1 3
21 .. .. 22 .. ..	5 12	1 5
22 .. .. 23 .. ..	5 15	1 7
23 .. .. 24 .. ..	5 19	1 9
24 .. .. 25 .. ..	6 3	1 12
25 .. .. 26 .. ..	6 8	1 16
26 .. .. 27 .. ..	6 13	2 1
27 .. .. 28 .. ..	6 19	2 6
28 .. .. 29 .. ..	7 6	2 12
29 .. .. 30 .. ..	7 14	2 17
30 .. .. 31 .. ..	8 3	3 3
31 .. .. 32 .. ..	8 12	3 9
32 .. .. 33 .. ..	9 2	3 16
33 .. .. 34 .. ..	9 12	4 3
34 .. .. 35 .. ..	10 2	4 10
35 .. .. 36 .. ..	10 12	4 16
36 .. .. 37 .. ..	11 1	5 2
37 .. .. 38 .. ..	11 10	5 8
38 .. .. 39 .. ..	12 0	5 14
39 .. .. 40 .. ..	12 9	6 0

TABLE IV—*continued*(b) SERVICE OF A FEMALE OFFICER WHOSE EMPLOYMENT IS BY WAY OF MANUAL LABOUR—*continued*

Age	Amount of transfer value appropriate in respect of each £100 of remuneration in relation to each completed year of service, namely:—	
	Contributing Service	Non-contributing Service
(1)	(2) £ s.	(3) £ s.
40 and under 41 .. ..	12 19	6 5
41 " " 42 .. ..	13 8	6 11
42 " " 43 .. ..	13 17	6 16
43 " " 44 .. ..	14 6	7 1
44 " " 45 .. ..	14 15	7 6
45 " " 46 .. ..	15 3	7 11
46 " " 47 .. ..	15 11	7 15
47 " " 48 .. ..	15 18	7 19
48 " " 49 .. ..	16 5	8 2
49 " " 50 .. ..	16 12	8 6
50 " " 51 .. ..	16 19	8 9
51 " " 52 .. ..	17 5	8 12
52 " " 53 .. ..	17 10	8 15
53 " " 54 .. ..	17 15	8 17
54 " " 55 .. ..	17 19	8 19
55 " " 56 .. ..	18 3	9 1
56 " " 57 .. ..	18 7	9 3
57 " " 58 .. ..	18 11	9 5
58 " " 59 .. ..	18 15	9 7
59 " " 60 .. ..	18 18	9 9
60 and over .. ..	19 0	9 10 [2212]

\* \* \* \* \*

Regulation 60

NINTH SCHEDULE  
ENACTMENTS REPEALED

Session and Chapter	Short Title	Extent of Repeal
9 Edw. 7, c. 48 ..	The Asylums Officers' Superannuation Act, 1909.	The whole Act, so far as relates to England and Wales.
8 & 9 Geo. 5, c. 33 ..	The Asylums and Certified Institutions (Officers Pensions) Act, 1918.	The whole Act, so far as relates to England and Wales.
20 & 21 Geo. 5, c. 23 ..	The Mental Treatment Act, 1930.	Subsection (9) of section 11.
25 & 26 Geo. 5, c. 23 ..	The Superannuation Act, 1935.	Section 10.
1 Edw. 8 & 1 Geo. 6, c. 68.	The Local Government Superannuation Act, 1937.	Subsection (5) of section 5.
2 & 3 Geo. 6, c. xxvii ..	The King Edward the Seventh Welsh National Memorial Association Act, 1939.	The whole Act.
3 & 4 Geo. 6, c. ix ..	The King Edward the Seventh Welsh National Memorial Association Act, 1940.	The whole Act.

[2213]

\* \* \* \* \*



## EXPLANATORY NOTE

*(This Note is not part of the Regulations, but is intended to indicate their general purport.)*

*These regulations provide for the establishment of a contributory superannuation scheme for—*

- (a) officers and servants of Regional Hospital Boards, Executive Councils and other bodies constituted under the National Health Service Act, 1946 ;*
- (b) general medical practitioners and general dental practitioners on the lists of Executive Councils ; and*
- (c) other persons engaged in health services, whether provided under the Act or otherwise.*

*The scheme, which will be administered by the Minister of Health, will be financed by contributions from the participants in its benefits and by contributions made out of Exchequer moneys. The scheme will not be funded but will be subjected to actuarial investigation periodically.*

*The scheme is designed to provide benefits comparable with those applicable in the case of an established civil servant under the Superannuation Acts, 1918–1946. The major benefits are a pension and a lump sum retiring allowance, together with a widow's pension. Subsidiary benefits include a death gratuity, an incapacity pension, an injury allowance, a short service gratuity and an option to a pensioner to allocate part of his pension to his wife or any dependant.*

*Provision is made for preserving the rights in respect of previous superannuable service of persons who become participants in the scheme on being transferred under the Act of 1946 to the central health service. In addition, superannuable employment in the central health service is made interchangeable with superannuable service in the Civil Service, the Local Government Service and the Teaching Service.*

*The scheme also extends and modifies the Local Government Superannuation Act, 1937, in its application to local health authorities and other superannuation schemes administered by local health authorities under local Acts by substituting benefits similar to those provided by the regulations for the benefits of the Act of 1937 or those local Act schemes in relation to superannuable employees on the medical and nursing staff of the local health authorities, and to any other classes of superannuable employees designated by the Minister. Similar provision is made in relation to the superannuable staff employed by local education authorities for the purposes of the school health service.*

## INCREASE OF PENSIONS (CALCULATION OF INCOME) (AMENDMENT) REGULATIONS, 1947

S. R. & O., 1947, No. 1929

September 3, 1947

Whereas by sub-section (2) of section 2 of the Pensions (Increase) Act, 1947, it is enacted that in calculating the income of a pensioner for the purposes of section 1 of the Pensions (Increase) Act, 1944 and the Second Schedule thereto the amount of any service pension (as defined in that Schedule) shall be taken into account :

Now therefore the Lords Commissioners of His Majesty's Treasury, in pursuance of Their powers under sub-section (1) of section 3 of the Pensions (Increase) Act, 1944, and of all other powers enabling Them in that behalf, hereby make the following Regulations :—

- 1.—(1) These Regulations may be cited as the Increase of Pensions

(Calculation of Income) (Amendment) Regulations, 1947, and these Regulations and the Increase of Pensions (Calculation of Income) Regulations, 1944, may be cited together as the Increase of Pensions (Calculation of Income) Regulations, 1944 and 1947.

(2) These Regulations shall be construed as one with the Increase of Pensions (Calculation of Income) Regulations, 1944.

(3) The Interpretation Act, 1889, applies to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament. [2214]

2. The proviso to paragraph (1) of Regulation 2 of the Increase of Pensions (Calculation of Income) Regulations, 1944 (which provides for disregarding the first fifty-two pounds a year of income otherwise than in respect of a pension specified in the First Schedule to the Pensions (Increase) Act, 1944), shall be amended by the insertion therein after the word "Act" of the words "or a service pension as defined in the Second Schedule thereto." [2215]

\* \* \* \* \*

### EXPLANATORY NOTE

*(This Note is not part of these Regulations, but is intended to indicate their general purport.)*

*Section 2 (2) of the Pensions (Increase) Act, 1947, provides that for the purpose of calculating the income of a pensioner, a service pension should be treated in the same way as a pension specified in the First Schedule to the Pensions (Increase) Act, 1944. This necessitates a consequential amendment of the Increase of Pensions (Calculation of Income) Regulations, 1944, which is effected by the present Regulations.*

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## INCREASE OF PENSIONS (EXTENSION) REGULATIONS, 1947

S. R. & O., 1947, No. 1930

September 3, 1947

The Lords Commissioners of His Majesty's Treasury, in pursuance of Their powers under section 5 of the Pensions (Increase) Act, 1947, and of all other powers enabling Them in that behalf, hereby make the following Regulations :—

1.—(1) These Regulations may be cited as the Increase of Pensions (Extension) Regulations, 1947.

(2) The Interpretation Act, 1889, applies to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament. [2216]

2.—(1) The persons or bodies of persons specified in the First Column of the Schedule hereto are hereby empowered to pay the like increases, of pensions payable by them or in respect of pensions otherwise payable by reference to service with them or to such service and other service, as would be payable if those pensions were pensions specified in the First Schedule to the Pensions (Increase) Act, 1944.

(2) Increases authorised by these Regulations may take effect as from the

date specified in relation to the said persons or bodies of persons respectively in the Second Column of the Schedule hereto.

(3) Nothing in these Regulations shall be held to authorise the payment of any increase in any case where the pension was granted with the consent of any person, unless the consent of that person is obtained to the increase authorised by these Regulations. [2217]

\* \* \* \* \*

First Column	Second Column
The Trustees of a Bank certified under the Trustee Savings Banks Act, 1863.	21st February, 1947
The Inspection Committee of Banks certified under the Trustee Savings Banks Act, 1863.	21st February, 1947
The Trustees of the Borough Market, Southwark ..	1st April, 1947
King Edward VII Welsh National Memorial Association.	19th February, 1947
London and Home Counties Joint Electricity Authority.	19th February, 1947
North West Midlands Joint Electricity Authority ..	19th February, 1947
West Midlands Joint Electricity Authority .. ..	19th February, 1947

### EXPLANATORY NOTE

*(This Note is not part of the Regulations, but is intended to indicate their general purport.)*

*Section 1 of the Pensions (Increase) Act, 1944 (as now amended by the Act of 1947) provided for increases in the pensions payable by the Exchequer or by local authorities to civil servants, teachers, police, firemen, local government officers, etc. The present Regulations empower the bodies mentioned in the Schedule to grant similar increases to their pensioners.*

**Circular 77/47**

*To all Local Authorities*

MINISTRY OF HEALTH,  
WHITEHALL,  
LONDON, S.W.1  
7th May, 1947

SIR,

#### SUPERANNUATION CONTRIBUTIONS BY LOCAL AUTHORITIES

I am directed by the Minister of Health to state that, in consultation with the Secretary of State for Home Affairs and the Minister of Transport, consideration has been given to the extent to which expenditure incurred by local authorities under the Local Government Superannuation Act, 1937, may be accepted as a proper charge in connection with services which are the subject of grant or reimbursement from Exchequer funds.

In cases where it has been the practice of grant-aiding Departments to accept as ranking for financial assistance charges by way of "equivalent contribution" under section 6 (2) of the Act in respect of any Local Government employee, an apportionment in respect of that employee of any sum properly payable under section 22 will, as from the 1st April, 1946, also be

admitted provided that the apportionment is made on a reasonable basis which is applied uniformly over the whole of the Council's services. Similar arrangements will be made where the superannuation fund is maintained in accordance with the Local Act which contains provisions analogous to those included in the Local Government Superannuation Act, 1937.

An additional copy of the Circular is enclosed for the information of the Chief Financial Officer of the Council.

I am, Sir, etc. [2218]

\*

\*

\*

\*

\*

The Clerk of the Authority.

## CASES

*Local government—Superannuation of officers—Right to annual superannuation allowance on ceasing to be employed—Question to be decided by Minister—Claim after cessation of employment—Local Government Superannuation Act, 1937 (c. 68), s. 35.*

*Practice—Procedure—Preliminary point of law—Unconditional appearance by defendants—Right to plead that plaintiff has no cause of action—R. S. C., Ord. 25, r. 2.*

W., who was employed by a local authority and was entitled, as an employee, to participate in the benefits of a superannuation fund, ceased to be so employed on December 17, 1945, and the local authority decided that he was not entitled to an annual superannuation allowance under the Local Government Superannuation Act, 1937, s. 8 (1) (a). In an action by W., begun on July 31, 1946, claiming a declaration that he was so entitled, unconditional appearance to the writ was entered by the local authority, but it was pleaded by para. 6 of the defence that W. had no cause of action because, under s. 35 of the Act of 1937, the question whether or not he was entitled to an allowance was to be determined by the Minister of Health. The master ordered that the issue raised by this defence should be disposed of before the trial, under R. S. C., Ord. 25, r. 2. At the hearing W. contended (i) that, since the authority had entered an unconditional appearance, the plea in para. 6 of the defence was bad since it denied the jurisdiction of the Court; (ii) that s. 35 of the Act of 1937 applied only to persons who were still in the employment of the authority and not to persons who had ceased to be employees:—

*Held:* (i) the fact that the local authority had entered an unconditional appearance to the writ did not preclude them from raising the point that W. had no cause of action because his proper and only remedy was the exercise of a statutory right of appeal, and the procedure under R. S. C., Ord. 25, r. 2, was, therefore, not open to objection.

*Wright v. Prescott Urban Council* (1916), 86 L. J. (Ch.) 221, considered.

(ii) although W. had ceased to be employed by the local authority before action brought, s. 35 of the Act of 1937 applied to him and he had no cause of action.—*WILKINSON v. BARKING CORPN.*, [1947] K. B. 821; [1947] 2 All E. R. 24; [1947] L. J. R. 1203; 111 J. P. 242; 63 T. L. R. 347; 45 L. G. R. 392. [2219]

# TOWN AND COUNTRY PLANNING

See also LAND, ACQUISITION, SALE, ETC., OF

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## STATUTES

### TOWN AND COUNTRY PLANNING ACT, 1947

(10 & 11 Geo. 6, c. 51)

#### PRELIMINARY NOTE

This far-reaching Act, which received the Royal Assent on August 6, 1947, provides for the exercise of a greater control over land and buildings than has previously been known in this country, and with this control local authorities are intimately connected, many being "local planning authorities" on which much of the responsibility for implementing its provisions rests and others being concerned through delegation. The Act deals with two separate though closely related subjects—first, the compensation to be paid on the compulsory acquisition of land, whether or not for planning purposes, these provisions (contained in Part V of, and Sched VII to the Act) being included in the title LAND, ACQUISITION, SALE, ETC. OF, *ante*; and secondly, town and country planning proper to which the rest of the Act relates and with which the present title is concerned.

The rapid development of the towns coupled with the break-up of the large hereditary estates and the immense improvement in communications that characterised the last century showed the need for some form of planning control if the good of the whole were not to be subordinated to the independence of the part, and, as the unit of area grew, it became increasingly clear that town planning was a national as well as a local concern.

It was not until 1909 that the first of our modern statutes was passed. This was the Housing, Town Planning, &c. Act, 1909, the purpose of which was officially explained as being "to ensure by means of schemes which may . . . be proposed either by local authorities or landowners, that in future land in the vicinity of towns shall be developed in such a way as to secure proper sanitary conditions, amenity, and convenience in connection with the laying out of the land itself and of any neighbouring land" (Local Government Board Circular of December 31, 1909). Planning legislation was here treated merely as a subsidiary of the law of housing.

Though the Act of 1909 has long since ceased to have effect, the thread of planning legislation can be traced through the Housing, Town Planning, &c. Act,

1919 (13 Halsbury's Statutes 956), and the Town Planning Act, 1925 (13 Halsbury's Statutes 1079), which first separated planning from housing, to the Town and Country Planning Act, 1932 (25 Halsbury's Statutes 470), which extended planning to land already built upon and enabled local authorities, if they so desired, to prepare town planning schemes zoning areas, restricting the density of residential zones, and generally laying down the positions of roads, open spaces and building lines. In addition, the design of new buildings was controlled in a limited way. There was, however, no obligation on local authorities to prepare planning schemes, and compensation was payable to persons adversely affected by restrictions imposed. Once a planning scheme had been decided on, "interim development control" (a concept introduced by the Act of 1919, *supra*) was exercised. Schemes had to be exact in detail and consequently took a long time to prepare, while insufficient provision was made or changes rendered necessary by altered circumstances and developing views on planning theory.

The Town and Country Planning (Interim Development) Act, 1943 (36 Halsbury's Statutes 239), dealt a blow at the piecemeal character of previous planning legislation by placing under interim development control as from October 22, 1943, all land not already subject to such control, and the same Act made important changes in the existing law. The central aspect of planning had already been strengthened, as from February 4, 1943, by the transfer of planning functions to a new and separate authority, the Minister of Town and Country Planning.

Since then the extension of control has come swiftly. The Town and Country Planning Act, 1944 (37 Halsbury's Statutes 420), gave powers of compulsory acquisition and development in the case of "areas of extensive war damage" (currently known as "blitzed areas") and "areas of bad lay-out and obsolete development" (known as "blighted areas"). Provision was also made for accommodating the "overspill" from densely inhabited districts in areas developed by local authorities for the purpose, the principle of this provision being later followed up by the New Towns Act, 1946 (39 Halsbury's Statutes 661). This element of active planned development, "constructive" as opposed to the previous "restrictive" legislation, is one of the most important developments in present-day planning theory.

Three major reports, the Barlow, Scott and Uthwatt Reports (Cmd. 6153, 6378 and 6386), have considered various aspects of the position, the first dealing with the distribution of the industrial population, the second the utilisation of land in rural areas, and the third the controversial problems of compensation and betterment. Each of these impinged in its own particular way on the provisions for settling land policy by the making of plans, enforcing planning control and taking positive action to see that the plan is carried into effect.

An Explanatory Memorandum on the Town and Country Planning Bill, 1947 (Cmd. 7006), listed four principal defects which, with the issues of compensation and betterment, the Bill was an attempt to solve. First, the position was too static, the procedure for altering schemes, as mentioned above, being inadequate. Next, the system was too localised, in that the local authorities concerned included both urban and rural district councils with consequent local variations in schemes which were not always justified by circumstances. Thirdly, there was no enforceable obligation on local authorities to prepare planning schemes, and lastly, the system was too negative, in that while it could by control prevent bad development it could not easily secure good development. The last point involved a much greater emphasis on the constructive side of planning.

Before examining the detailed provisions of the Town and Country Planning Act, 1947, it may be well to note the dates of its commencement and the extent of its application. Though the Act received the Royal Assent on August 6, 1947, only the following provisions came into force on that day: ss. 2 and 3; ss. 37 (2) and 38 (2) and any other provisions of Part IV of the Act relating to the acquisition of land under s. 37 (2) or 38 (2); the whole of Part V (dealt with in the title LAND, ACQUISITION, SALE, ETC., OF, *ante*); so much of s. 91 as relates to acquisitions before the appointed day; so much of s. 113 (2) as relates to Sched. IX, Part I; and Sched. IX, Part I, itself (s. 120 (2)). The rest of the Act did not come into operation until July 1, 1948, the date appointed by order of the Minister of Town and Country Planning under s. 119 (1) (see S.I. 1948 No. 213).

The Act as a whole applies only to England and Wales, and only s. 2 (which

provides for the establishment of the Central Land Board, with special reference to Scotland) and s. 58 (2) (which includes Scotland in the area for which the global sum of £300,000,000, referred to later, is to provide) apply to Scotland, where special, though parallel, provision has been made by the Town and Country Planning (Scotland) Act, 1947 (10 & 11 Geo. 6, c. 53). No part of the Act applies to Northern Ireland.

The present Act repeals most of the earlier statutes on the subject (ss. 113, 120 and Sched. IX), and in their stead establishes a system of planning which is far more ambitious and comprehensive than the provisions contained in any previous enactments dealing with the subject. The pattern of the Act may be summarised thus : the right to "develop" land is denied to the private owner, a global sum of £300,000,000 being allocated to meet hardship caused to owners by the loss of development values ; this sum will be recovered by a charge which may be levied where development is permitted ; compensation for public acquisition of land is limited to the value of the land for its existing use, since no development right remains in private ownership ; and the reduced cost of compensation is reflected in a new planning code which provides for a greater amount of public development. Further, Exchequer contributions are provided in aid of this development.

Part I of the Act, which is merely introductory, is concerned with the agencies through which this policy is to be implemented. At the national end comes the Minister of Town and Country Planning (s. 1), and a new public corporation, the Central Land Board, whose constitution and functions are provided for by ss. 2 and 3.

On October 28, 1947, the Minister (jointly with the Secretary of State) made under powers conferred by s. 2 the Central Land Board Regulations, 1947, S. R. & O., 1947, No. 2294, whereby provision was made for the appointment and tenure of office of members, the non-disclosure of information and the execution of documents by the Board. Further, in the House of Commons on November 11, 1947, the Minister stated that he had invited the Chairman of the War Damage Commission, Sir Malcolm Eve, and its other members, to accept appointment to the Central Land Board, so that the Central Land Board might have the advantage of the ability and experience of the War Damage Commissioners, and be able to draw on the Commission's staff and accommodation. The Chairman and most of the members had been able to accept the appointment which would, however, hold good only until March 31, 1948, when the position would be reviewed (444 H. of C. Official Report 168-169).

At the other end of the scale come the "local planning authorities," comprising county councils and county borough councils to the exclusion of county district councils ; but this is subject, first, to the Minister's power of uniting areas under joint planning boards (s. 4), and secondly, to the power of local planning authorities to delegate their powers in regard to development control to district councils (s. 34). In the latter connection, the Minister on November 21, 1947, made the Town and Country Planning (Authorisation of Delegation) Regulations, 1947, S. R. & O., 1947, No. 2499, allowing local planning authorities (other than county borough councils), by agreements made with the Minister's consent, to delegate to county district councils any of their functions under Part III of the Act, subject to the detailed provisions of the order. (See also Town and Country Planning Circular No. 37/47). S. 4 and Sched. I to the Act provide for the setting up of joint advisory committees of local planning authorities.

Next, Parts II and III of the Act provide the new planning code. In essentials, this is little different from the previous code, though it does provide for the incorporation of s. 20 of the Town and Country Planning Act, 1944 (38 Halsbury's Statutes 449) without limitation on the development which may be undertaken by local authorities (see Sched. XI). Instead of the scheme under the 1932 Act, *supra*, the new code provides for a development plan which is to be the beginning of the process and not the end. Moreover, instead of interim development control preceding the making of a scheme, which was a salient feature of the 1932 and 1943 Acts, *supra*, the present Act provides for development control to follow the plan. The local planning authorities are to survey their areas and, within three years from July 1, 1948, prepare plans showing the future development proposed (s. 5) ; in preparing their plans, county councils are required to consult the county district councils in their area (s. 10). These plans will not be unlike the schemes under the 1932



Act, but they will bear more resemblance to re-development plans under the 1944 Act: *inter alia*, they may designate as subject to compulsory purchase any lands required for statutory or planning purposes (s. 5 (1) (c)), the effect of such designation being somewhat similar to that of a declaratory order under the 1944 Act. Acquiring authorities for planning purposes under the Act will not be the local planning authorities but the councils for the areas in which the land is situated (s. 5 (2) (c) and s. 119 (1)).

The new plans, which will be more flexible than schemes under the 1932 Act, will be subject to five-yearly review (s. 6 (1)). They will require approval by the Minister of Town and Country Planning (s. 5 (4)), and will be subject to inquiry before confirmation.

Once plans are confirmed they will be a basis for the development control for which Part III of the Act provides. Permission under these provisions will be required for practically all development (s. 12). The grant of such permission will be provided for by a development order made by the Minister (s. 13 (1)); this order may itself grant the consent, but usually the procedure will be by application to the local planning authority or the delegate local authority. Application may also be made under this section and under s. 18 for permission to retain contravening development. Where permission is refused, an appeal will lie to the Minister under s. 16, but the Minister need not consider an appeal relating to development which is contrary to the plan (s. 16 (1), proviso).

In the past, cases of doubt have arisen as to whether planning permission was or was not necessary, and s. 17 introduces a useful provision whereby application may be made for determination whether any proposed development requires consent. This provision and the supplementary provisions that follow in s. 18 are similar to those contained in the Building Restrictions (War-Time Contraventions) Act, 1946 (39 Halsbury's Statutes 899).

From the provisions of s. 10 (6) of the 1932 Act (25 Halsbury's Statutes 484) and s. 11 of the 1944 Act (37 Halsbury's Statutes 437) there has evolved a purchase notice procedure, described in s. 19 of the present Act, whereby if, by reason of a refusal of permission to develop, any land becomes incapable of reasonably beneficial use, the owner may serve a notice on the council of the district requiring them to purchase his land. Such a notice is to be transmitted to the Minister and requires his confirmation.

S. 21 provides that permissions granted may be revoked or modified by orders made by the relevant local planning authority and confirmed by the Minister. A hearing will be given to objecting parties and the procedure is similar to that of revocation orders under the 1943 Act, *supra*. Where such an order is confirmed, however, compensation must be paid for the depreciation of the existing use value (s. 22).

Where any development contravenes the development control provisions or any previous planning control, such development may be prohibited by an enforcement notice under s. 23 of the Act, this notice being similar to the prohibition notice procedure of s. 13 of the 1932 Act (25 Halsbury's Statutes 485) as extended by s. 5 of the 1943 Act (36 Halsbury's Statutes 245). In addition to a right of appeal to the justices, however, an application may be made to the planning authority for permission to retain the use on its merits (s. 23 (3) (a)). The enforcement notice must be served within four years of the development taking place or, in relation to previous contravening development, within three years of July 1, 1948.

If an enforcement notice is not complied with, the local planning authority concerned may enter and enforce the action required by the notice, and may recover any reasonable expenses incurred in so doing. Where a use is carried on in contravention of the notice, persons carrying on or permitting or causing such use become liable to a fine of £50 on a first conviction and on further conviction to a maximum fine of £20 for every day on which the use is so continued (s. 24).

The development or use of land may be regulated by agreement (s. 25), and by the following section in the interests of proper planning wide powers are given to local planning authorities to require discontinuance or modification of existing uses, even though such uses are authorised, subject, however, to payment of compensation (ss. 26, 27).

Special provision is made for "tree preservation orders" for the preservation of trees and woodlands in the interests of amenity (s. 28), and for equivalent

"building preservation orders" and other machinery for keeping intact buildings of special architectural or historic interest (ss. 29, 30).

Among the more important provisions of Part III of the Act are ss. 31 and 32, which constitute a new code for the display of advertisements, superseding as from July 1, 1948, the Advertisements Regulation Acts, 1907 and 1925 (13 Halsbury's Statutes 908, 1113), which are accordingly repealed (ss. 113, 120 and Sched. IX). Provision is also made by s. 33 for the service of "abatement notices" (similar to enforcement notices) in respect of any vacant land felt to be an eyesore.

Part IV of the Act, which deals with the acquisition and disposal of land for planning purposes, is important as providing the machinery for carrying out the constructive development mentioned earlier. Where development is shown to be desirable, owners may not always be willing to develop their land themselves or allow others to develop it for them, and this Part of the Act therefore lays down the procedure for compulsory purchase. Its provisions can best be understood by reference to s. 5 (2) of the Act which allows designation for compulsory purchase as follows:

*Paragraph (a)*—Land required by a Minister, local authority or statutory undertakers for their functions; and

*Paragraph (b)*—Land in an area to be developed or re-developed as a whole or an associated "overspill" area, and any other land which may have to be acquired compulsorily to secure its use in accordance with the plan.

S. 37, the first section in Part IV of the Act, provides for compulsory acquisition as in paragraph (a), *supra*, by applying the procedure laid down in the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Halsbury's Statutes 52), including the speedy purchase procedure of s. 2 of that Act. The following section (s. 38) follows this up by making somewhat similar provision for the cases covered by Paragraph (b), *supra*, though here the speedy procedure is negatived, the procedure for expedited completion which appeared in the 1944 Act being substituted (s. 39).

Next, s. 40 gives local authorities wide powers of acquiring land by agreement if required for planning purposes, but the consent of the Minister is required and the provisions of the Lands Clauses Acts (2 Halsbury's Statutes 1113 *et seq.*) are to apply.

Succeeding sections of Part IV confirm the powers of local authorities to purchase buildings of special architectural or historic interest (s. 41), and to appropriate for development any land held by them forming part of a common or open space (s. 42), while provision is also made with regard to the construction, stopping-up and diversion of highways, the execution of street-works and other matters (ss. 47, 48 and 49).

Part V of the Act (dealt with in the title LAND, ACQUISITION, SALE, ETC., OF, *ante*) needs no further mention here. Parts VI and VII, taken together, make a determined effort to solve the problems of compensation and betterment which have raised such difficulty in the past. The Barlow, Scott and Uthwatt Reports, *ante*, all took the view that the chief obstacle to planning was the cost of compensation and the impossibility of recovering any part of that cost by a betterment charge. The opinion was also expressed that the item in the compensation cost which caused most difficulty was the obligation to pay for floating development value. The present Act solves the problems of compensation and betterment by expropriating all development rights in exchange for a payment of £300,000,000 (ss. 12, 58 and 69 (1)). Betterment, in the future, will be collected by the Central Land Board on almost all development.

The sum of £300,000,000 is not compensation, but is a value which has been placed on the "float" and which will be paid out, in accordance with a scheme to be made by the Treasury and approved by each House of Parliament, to persons who can show that their lands possessed development value of which they have been deprived by the Act (s. 58). This scheme may take into account other circumstances besides the loss of development values. The view expressed in the Ministry's Explanatory Memorandum (Cmd. 7006) is that, since the Act imposes only a negative restriction on the right of property, no compensation is payable at common law (see the Uthwatt Report, *ante*, paras. 32 to 38), but that since hardship will undoubtedly be caused if no payment is made the sum of £300,000,000 is being allocated to avoid hardship. No attempt has been made in the Act to define "hardship" in this context.

The concept of development value, which is to be calculated by reference to the condition of the land at July 1, 1948, is defined with some particularity (s. 61). In broad terms, it is the difference between the "unrestricted value" of the land (the full market value were the land not restricted by the Act) and the "restricted value" (the value of the land subject to the restrictions imposed by the Act, which may roughly be taken as its value for the purposes for which it is currently used), always assuming that the unrestricted value is greater than the restricted. The actual calculation of the value will be based not on prices at the appointed day but at January 7, 1947, the date when the provisions of the Bill were made known.

Payments out of the global sum of £300,000,000 are to be satisfied not in cash but by the issue of government stock, bearing interest at a rate to be determined by the Treasury (ss. 65, 66), but certain payments in respect of war-damaged land for which provision is made by s. 59 are to be paid in cash (s. 65).

The power to levy charges in respect of future development is in some ways an offset to the payments out of the global sum considered above. As a general rule, a person who wishes to carry out operations or make a new use of land or a building for which planning permission is required will, unless the case comes within a limited class described in Sched. III, have to pay a development charge to the Central Land Board (s. 69). In assessing the amount of the charge, that Board will act in accordance with regulations of the Minister made with the consent of the Treasury (s. 70), and against such assessments by the Board there is no appeal.

Development charges may be determined as a single capital payment or as a series of annual or other periodical payments; in the latter event the Board may require security (s. 71). S. 73 gives the Board limited powers to vary their determinations as to development charges.

Part VIII relates the provisions of the Act to a number of special cases which otherwise cannot be readily brought within its general provisions. Considerations of space preclude more than a mere mention at this stage. The cases of buildings unfinished at July 1, 1948 (s. 78), land then already ripe for development (s. 80), the working of minerals in relation to development (s. 81), requisitioned land (s. 89), land held by local authorities or by statutory undertakers or by charities (ss. 82-85), Crown land (ss. 87-88) and the property of the National Coal Board (s. 90) are all provided for.

In addition, the provisions of the Act are related to various cases arising under previous planning control (ss. 75-77, 79; see also Sched. X).

Local authorities are particularly concerned with Part IX of the Act which, by s. 93, makes available Exchequer subsidies in aid of re-development by local authorities. On the Third Reading of the Bill in the House of Commons on May 20, 1947, the Minister indicated that, under the regulations to be made, re-development in war-damaged areas would receive a grant for sixty years at a maximum of 90 per cent. of the annual cost for the first five years and 50 per cent. for the remainder of the time. Other re-development would be subject to a weighting formula with subsidies ranging from just below the war-damaged areas rate down to 50 per cent. for the first five years, 30 per cent. for the next seven, and 20 per cent. for the remainder (437 H. of C. Official Report 2201-2202).

Other Exchequer grants may be made in respect of expenditure incurred in paying certain compensation under Parts III and VIII of the Act, the limit of such grants being 50 per cent. of the expenditure (s. 94). The conditions relating to the provision of Exchequer grants are dealt with in s. 95, while the section following enables additional grants to be made to local authorities in respect of contributions or compensation paid under the 1932 and 1943 Acts, *supra*, by authorities which were interim development authorities under those Acts (s. 96).

Where compensation is payable by reason of a decision or order, given or made in the interest of some service provided by a government department, the Minister responsible may, by s. 97, make a contribution in respect of such compensation. Local authorities and statutory undertakers may contribute towards the expenses of local planning authorities; and the Minister may require one local authority to contribute towards the expenses of another local authority where he considers it reasonable because of a benefit accruing to the former through a proceeding giving rise to compensation (s. 98).

The most important matters dealt with by the supplemental provisions comprising Part X of the Act are those relating to the default powers of the Minister (s. 100), and the transfer of functions and establishments to the new local planning

authorities constituted under the Act (s. 101). By s. 102 provision is also made for securing, in the interests of simplicity, that only one application need be made for planning permission, for the fixing of a development charge and for any consent required under any other Act, a concession that will be cordially welcomed in legal circles. There are special provisions for London (s. 114). [2220]

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*An Act to make fresh provision for planning the development and use of land, for the grant of permission to develop land and for other powers of control over the use of land ; to confer on public authorities additional powers in respect of the acquisition and development of land for planning and other purposes, and to amend the law relating to compensation in respect of the compulsory acquisition of land ; to provide for payments out of central funds in respect of depreciation occasioned by planning restrictions ; to secure the recovery for the benefit of the community of development charges in respect of certain new development ; to provide for the payment of grants out of central funds in respect of expenses of local authorities in connection with the matters aforesaid ; and for purposes connected with the matters aforesaid. [2221] [6th August 1947.]*

## PART I

## CENTRAL AND LOCAL ADMINISTRATION

**1. The Minister.**—The Minister for the purposes of this Act shall be the Minister of Town and Country Planning, and the expression “the Minister” in this Act shall be construed accordingly. [2222]

*The Minister of Town and Country Planning.*—The Minister of Town and Country Planning Act, 1943, s. 1 (38 Halsbury's Statutes 40), provided for the appointment of a Minister of Town and Country Planning “to be charged with the duty of securing consistency and continuity in the framing and execution of a national policy with respect to the use and development of land throughout England and Wales. . . .”

By s. 5 of the same Act the Minister is constituted a corporation sole with an official seal.



**2. The Central Land Board.**—(1) For the purpose of the performance of the functions assigned to them by the following provisions of this Act, and by any corresponding provisions which may be enacted in relation to Scotland, there shall be established a Board to be called the Central Land Board which shall be a body corporate by that name, with perpetual succession and a common seal. [2223]

(2) The Board shall consist of a chairman and such number of other members (not exceeding nine) as the Ministers may think expedient, to be appointed by the Ministers, and the Ministers may appoint one of the members of the Board to act as deputy chairman. [2224]

(3) The Board, with the approval of the Ministers, may appoint a Secretary to the Board, and such other officers and such servants as the Ministers may, with the consent of the Treasury, determine. [2225]

(4) There shall be paid to the members, officers and servants of the Board such remuneration (whether by way of salaries or by way of fees), and such reasonable allowances in respect of expenses properly incurred in the performance of their duties, as may be determined by the Ministers with the consent of the Treasury; and any such remuneration and allowances as aforesaid shall be defrayed out of moneys provided by Parliament. [2226]

(5) The Ministers may make regulations with respect to any of the following matters, that is to say :—

(a) the appointment of members of the Board, and their tenure and vacation of office;

(b) the execution of instruments by or on behalf of the Board, and the proof of documents purporting to be executed, issued or signed by the Board or by a member, officer or servant thereof,

and subject to the provisions of any such regulations as aforesaid, the Board shall have power to regulate their own procedure (including the manner in which matters subject to the determination of the Board are to be determined by or on behalf of the Board). [2227]

(6) The validity of any proceeding of the Board shall not be affected by any vacancy amongst the members thereof, or by any defect in the appointment of a member thereof. [2228]

(7) The Board shall, as soon as possible after the end of each financial year of the Board, make to the Ministers a report on the exercise and performance by them of their functions during that year; and the Ministers shall lay a copy of every such report before each House of Parliament. [2229]

(8) In this section the expression “Ministers” means the Minister and the Secretary of State concerned with town and country planning in Scotland. [2230]

*Date of commencement of this section.*—August 6, 1947 (s. 120, *post*).

*Functions.*—Includes power and duties (s. 119 (1), *post*). The principal functions of the Central Land Board arise under Parts VI and VII of the Act, *post*.

*Chairman.*—The Minister stated when the Act as a Bill was being considered in Standing Committee of the House of Commons :—

“The chairman will be full time and possibly the vice-chairman. The members will be part time and . . . removed from the sphere of party politics. . . .” (H. of C. Official Report, S.C.D., February 20, 1947, col. 60).

As to membership of the Board, see the Preliminary Note, *ante*.

*Regulations.*—See also ss. 3 (4) and 111, *post*. Under the present section the Minister has made the Central Land Board Regulations, 1947, S. R. & O., 1947, No. 2294, dated October 28, 1947, as to which see the Preliminary Note, *ante*.

**3. General provisions as to functions of Central Land Board.**—(1) The Central Land Board shall, in the performance of their functions under this Act, comply with such directions of a general character as may be given to them by the Minister. [2231]

(2) The report made for any year under subsection (7) of the last foregoing section shall set out any direction given by the Minister to the Board during that year unless the Minister has notified to the Board his opinion that it is against the interests of national security so to do. [2232]

(3) The functions under this Act of the Board, and of their officers and servants, shall be exercised on behalf of the Crown. [2233]

(4) Regulations made for the purposes of the last foregoing section shall provide for requiring members of the Board who are interested in any land the subject of a claim or application made to the Board under this Act to disclose to the Board the nature of their interest, and may for that purpose apply any of the provisions of section one hundred and forty-nine of the Companies Act, 1929, subject to such modifications as may be prescribed by the regulations. [2234]

(5) Any administrative expenses incurred for the purposes of this Act by the Board with the approval of the Minister shall, to such extent as may be sanctioned by the Treasury, be defrayed out of moneys provided by Parliament. [2235]

*Date of commencement of this section.*—August 6, 1947 (s. 120, *post*).

*Directions of a general character.*—It would appear to be within the power of the Central Land Board to encourage or discourage a particular class of development by imposing a light or heavy development charge. This is a point on which the Minister might issue a general direction, but he would not be able to direct the Board to impose a heavy or light charge in a particular case (see also s. 70 (3), *post*).

*Annual report of the Central Land Board.*—This report will be made to the Ministers mentioned in s. 2 (8), *ante*, and it will be presented by them to each House of Parliament where it may be debated. This will give Parliament an opportunity of raising questions relating to directions given to the Board by the Minister and disclosed in the report.

*Functions.*—Includes powers and duties (s. 119 (1), *post*).

*On behalf of the Crown.*—See now the Crown Proceedings Act, 1947 (10 & 11 Geo. 6, c. 44).

*Regulations.*—See, further, s. 111, *post*.

*Land.*—"Land" is defined by s. 119 (1), *post*.

*Companies Act, 1929, s. 149.*—2 Halsbury's Statutes 872. This section provides, *inter alia*, that it shall be the duty of a director of a company who is in any way, whether directly or indirectly, interested in any contract or proposed contract with the company to declare the nature of his interest at a meeting of the directors of the company. Any director who fails to comply with the provisions of this section is liable to a fine not exceeding one hundred pounds.

**4. Local planning authorities, etc.**—(1) Subject to the provisions of this section, the local planning authority for the purposes of this Act shall, for each county or county borough, be the council of that county or borough. [2236]

(2) If it appears to the Minister that it is expedient that a joint board should be established as the local planning authority for the areas of any two or more such councils as aforesaid, or for any parts of those areas, he may by order constitute those areas or parts as a united district for the purposes of this Act, and constitute a joint board (in this Act referred to as a joint planning board) as the local planning authority for that district:

Provided that the Minister shall not make such an order except after holding a local enquiry unless all the councils concerned have consented to the making of the order. [2237]

(3) Where an inquiry has been held under the provisions of the last foregoing subsection, the order shall be laid before Parliament and if either house, within a period of forty days after the order is so laid before it, resolves that the order be annulled, the order shall thereupon cease to have effect, but without prejudice to the validity of anything previously done thereunder or to the making of a new order.

In reckoning for the purposes of this subsection any such period of forty days, no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days. [2238]

(4) The provisions of Part I of the First Schedule to this Act shall have effect with respect to the constitution of joint planning boards under this section; and the provisions of Parts II and III of that Schedule shall have effect with respect to the establishment and functions of planning committees and joint advisory committees of local planning authorities. [2239]

(5) References in this Act to a local planning authority (except references

thereto in the said First Schedule) or to a local authority shall include references to a joint planning board constituted under this section ; and references in this Act to the area of a local planning authority shall be construed—

- (a) in relation to a joint planning board, as references to the united district for which the board is constituted ; and
- (b) in relation to a local planning authority for an area of which part only is included in such a district, as references to that part of that area which is not so included. [2240]

(6) If it appears to the Minister, after consultation with the local authorities concerned, to be expedient that any land acquired by a local authority under section thirty-eight or forty of this Act should be held by a joint body consisting of representatives of that authority and of any other local authority, he may by order provide for the establishment of such a joint body and for the transfer to that body of the land so acquired ; and any such order may make such provision as the Minister considers expedient with respect to the constitution and functions of the joint body including provisions—

- (a) for incorporating the joint body ;
- (b) for conferring on them, in relation to the land transferred to them as aforesaid, any of the powers conferred on local authorities by Part IV of this Act in relation to land acquired and held by such authorities for the purposes of the said Part IV ;
- (c) for determining the manner in which their expenses are to be defrayed. [2241]

*General note.*—The expression “ local planning authority ” did not occur in the Town and Country Planning Act, 1932 (25 Halsbury’s Statutes 470), or the Town and Country Planning (Interim Development) Act, 1943 (36 Halsbury’s Statutes 239). Under the 1932 Act “ local authorities for the purposes of the Act ” were :—

- (a) As respects the City of London, the common council of that city,
- (b) As respects the County of London, the London County Council,
- (c) Elsewhere, the councils of county boroughs and county districts (1932 Act, s. 2 (1) ; 25 Halsbury’s Statutes 472).

The above authorities were the authorities primarily charged with the duty of preparing planning schemes.

Sub-s. (2) of s. 2 of the 1932 Act (25 Halsbury’s Statutes 473) provided for an alternative arrangement, and enabled a district council to relinquish to a county council some or all of its powers as planning authority.

S. 3 of the 1932 Act (25 Halsbury’s Statutes 473) provided that two or more authorities, being local authorities or county councils and desirous of acting jointly in the preparation of a scheme, could concur in appointing a joint committee for the purpose.

By s. 4 of the 1932 Act (25 Halsbury’s Statutes 474) the Minister was empowered in certain circumstances to bring about a combination of authorities for purposes of schemes and for this purpose to constitute joint committees.

In the Town and Country Planning Act, 1944 (see s. 55 ; 37 Halsbury’s Statutes 474), the expression “ local planning authority ” is used to denote such a council as is mentioned in s. 2 (1) of the 1932 Act, *supra*.

Under the present Act, the common council of the City of London will cease to be a local planning authority ; so also will non-county boroughs and urban and rural district councils. The London County Council will become the local planning authority for the City of London (see s. 114 (1), *post*), and county councils the local planning authorities for all places within the county except county boroughs.

The Minister is empowered, however, to form “ united districts ” and appoint a joint board as the local planning authority for such a district. References to local planning authorities in the Act include references to a joint planning board where established (sub-ss. (2) and (4), *ante*).

The transfer of property and officers to local planning authorities under this Act is dealt with in s. 101, *post*.

Note that this section like the remainder of the Act except those provisions mentioned in the proviso to s. 120 (2), does not come into force until the appointed day, namely, July 1, 1948 (see S.I. 1948 No. 213).

*If it appears to the Minister.*—These words are inserted for the purpose of making the Minister the sole judge (subject to Parliament) of the question whether or not it is expedient that a joint board should be established.

Certain other expressions such as “ in the opinion of the Minister,” “ if the Minister is satisfied ” and “ if it is clear to the satisfaction of the Minister,” have a similar effect ; see *Robinson v. Sunderland Corpn.*, [1899] 1 Q. B. 751, *per* CHANNELL, J., at pp. 756, 757 ; *R. v. Comptroller General of Patents, Ex parte Bayer Products, Ltd.*, [1941] 2 K. B. 306 ; [1941] 2 All E. R. 677, *per* SCOTT, L.J., at p. 681 ; *Liversidge v. Anderson*, [1942] A. C. 206 ; [1941] 3 All E. R. 338, *per* Lord ATKIN, at pp. 353, 354 ; *Point of Ayr Collieries, Ltd. v. Lloyd-George*, [1943] 2 All E. R. 546, and *Robinson v. Minister of Town & Country Planning*, [1947] K. B. 702 ; [1947] 1 All E. R. 851, C. A., *post*.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Order.*—The power to make an order includes power to amend or revoke that order by a subsequent order (s. 111 (4), *post*).

*United district.*—A united district may comprise the areas or parts of the areas of two or more such councils as are mentioned in sub-s. (1), *ante*.

*Local enquiry.*—See s. 104, *post*. The inquiry would be held on behalf of the Minister with reference to an order which he himself proposed to make. As to inquiries of this kind and local inquiries generally, see s. 104, *post*, and notes thereto.

An objection to the establishment of a joint planning board which might carry weight with the Minister would be that there is no community of interest between the areas which it is proposed to form into a united district and therefore that there is no advantage in seeking to plan the area as a whole.

*The order shall be laid before Parliament.*—The procedure of the two Houses when orders or regulations are "laid" is described in the Report of the Committee on Ministers' Powers, 1932 (Cmd. 4060), at pp. 41-44. This provision affords an opportunity to an aggrieved county council or county borough council to secure a debate in Parliament.

*Planning committee and joint advisory committee.*—The planning committee of a local planning authority must be distinguished from a joint advisory committee, which is a committee of two or more local planning authorities (Sched. I, Part II, *post*).

*Joint body.*—A joint body might be established under sub-s. (6) of this section where a local authority proposed to acquire land in another local authority's area for the purpose of "re-locating" a part of their population which they are unable to accommodate in their own area. This sub-section would enable the Minister to make an order under which the land required by the "exporting" authority could be acquired jointly or held jointly with the authority in whose area the population was being "re-located."

The Minister is not obliged to hold a local inquiry before making an order under this subsection; he is, however, obliged to consult the authorities concerned.

*Definitions.*—For definitions of "functions," "local authority" and "land," see s. 119 (1), *post*.

## PART II

### DEVELOPMENT PLANS

#### 5. Surveys of planning areas and preparation of development plans.—

(1) As soon as may be after the appointed day, every local planning authority shall carry out a survey of their area, and shall, not later than three years after the appointed day, or within such extended period as the Minister may in any particular case allow, submit to the Minister a report of the survey together with a plan (hereinafter called a "development plan") indicating the manner in which they propose that land in that area should be used (whether by the carrying out thereon of development or otherwise) and the stages by which any such development should be carried out. [2242]

(2) Subject to the provisions of any regulations made under this Act for regulating the form and content of development plans, any such plan shall include such maps and such descriptive matter as may be necessary to illustrate the proposals aforesaid with such degree of particularity as may be appropriate to different parts of the area; and any such plan may in particular—

- (a) define the sites of proposed roads, public and other buildings and works, airfields, parks, pleasure grounds, nature reserves and other open spaces, or allocate areas of land for use for agricultural, residential, industrial or other purposes of any class specified in the plan;
- (b) designate, as land subject to compulsory acquisition by any Minister, local authority or statutory undertakers any land allocated by the plan for the purposes of any of their functions (including any land which that Minister or authority or those undertakers are or could be authorised to acquire compulsorily under any enactment other than this Act);
- (c) designate as land subject to compulsory acquisition by the appropriate local authority—

- (i) any land comprised in an area defined by the plan as an area of comprehensive development (including any land therein which is allocated by the plan for any such purpose as is mentioned in paragraph (b) of this subsection), or any land contiguous or adjacent to any such area;

(ii) any other land which, in the opinion of the local planning authority, ought to be subject to compulsory acquisition for the purpose of securing its use in the manner proposed by the plan. [2243]

(3) For the purposes of this section, a development plan may define as an area of comprehensive development any area which in the opinion of the local planning authority should be developed or re-developed as a whole, for any one or more of the following purposes, that is to say for the purpose of dealing satisfactorily with extensive war damage or conditions of bad layout or obsolete development, or for the purpose of providing for the relocation of population or industry or the replacement of open space in the course of the development or redevelopment of any other area, or for any other purpose specified in the plan; and land may be included in any area so defined, and designated as subject to compulsory purchase in accordance with the provisions of subsection (2) of this section, whether or not provision is made by the plan for the development or redevelopment of that particular land. [2244]

(4) The Minister may approve any development plan submitted to him under this section either without modification or subject to such modifications as he considers expedient:

Provided that—

- (a) the Minister shall not approve a development plan which designates any land as subject to compulsory acquisition as aforesaid if it appears to him that the acquisition is not likely to take place within ten years from the date on which the plan is approved, or, in the case of land being agricultural land within the meaning of the Rating and Valuation (Apportionment) Act, 1928, within seven years from that date;
- (b) the Minister shall not, except with the consent of all persons interested, approve a development plan subject to a modification designating as subject to compulsory acquisition any land not so designated in the plan as submitted to him;
- (c) where a development plan as submitted to the Minister designates as subject to compulsory acquisition any such land as is mentioned in paragraph 9 of the First Schedule to the Acquisition of Land (Authorisation Procedure) Act, 1946 (which relates to land of local authorities and statutory undertakers and inalienable land of the National Trust) then, if objection to the proposed designation is duly made by the local authority or statutory undertakers or the National Trust, as the case may be, and is not withdrawn, the land shall not be so designated except in pursuance of an order made by the Minister (or, in the case of land being operational land of statutory undertakers, by the Minister and the appropriate Minister) and any such order shall be subject to special parliamentary procedure. [2245]

(5) At any time before a development plan with respect to the whole of the area of a local planning authority has been approved under this section, that authority may, with the consent of the Minister, and shall if so required by directions of the Minister, prepare and submit to him a development plan relating to any part of that area, and the foregoing provisions of this section shall apply in relation to any such plan as they apply in relation to a plan relating to the whole of that area. [2246]

*Appointed day.*—Means such day as the Minister may by order appoint (s. 119 (1), *post*). July 1, 1948, has been so appointed (see S.I. 1948 No. 213).

*Survey.*—See the extract from the Minister's speech on the Second Reading of the Bill in the note "Development plan," *post*.

The Ministry of Town and Country Planning will probably issue a memorandum dealing with the matters to be included in the survey and dealt with in the report.

Note that, by s. 10, *post*, local planning authorities, before preparing a plan relating to land comprised in a county district, must consult with the council of that district.

Any local authority and any statutory undertakers may contribute towards any expenses incurred by a local planning authority in connection with the carrying out of the survey or in the preparation of a development plan (s. 98, *post*).

For powers of entry, see s. 103, *post*.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Development plan.*—The following is an extract from the Minister's speech on the Second Reading of the Bill:

"How will the local planning authority set about preparing the plan? The first step is the survey. This will cover the physical features of the area, water supply, soil fertility, minerals, and so forth; the growth of population, the industries that are expanding and those that are declining; housing, open spaces, public buildings; the development projects of the transport authorities, of local industrialists, of statutory undertakers, and of Government Departments. I attach the greatest possible importance to this survey, which will present a reliable and detailed analysis of the community from every aspect, and an estimate of its future growth and needs. Without this survey no plan can be of any real value. It will need the co-operative effort of economists, geographers, sociologists and other professions to secure that all the facts about the area are known, including the characteristics and wishes of the people. Here there is room for considerable scientific research and the fullest possible collaboration with the universities. A new type of planner will have to be trained to carry out this broader conception of planning, and I am confident that the universities will recognise the importance and urgency of the matter, and fully play their part both in research and in training.

"On the basis of all this information, and after full consultation with all concerned with the county districts, public authorities, and regional representatives of Government Departments, the local planning authority will prepare their provisional plan. The greater part of this plan will be simply framework. It will show the principal communications and the broad allocation of land among the main uses, such as agriculture, new towns to be established, existing communities to be enlarged, special areas to be preserved because of their scenic beauty, and so on. Over part of the area, the plan is likely to go into much more detail. Where large numbers of new houses are to be built soon—there will be a good many of them—large-scale maps will show two or three neighbourhood units, each with its shopping centre, elementary school and open spaces. My regional officers will be available to help and advise at all stages of the preparation of the plan, and I hope they will be freely called upon.

"Next, the provisional plan will be exhibited and submitted to public opinion by such means as maps and pamphlets, travelling exhibitions, talks by planning technicians, and films and models of the more important parts of the area. . . . It is not merely landowners in the area who are affected, or even business interests. Too often in the past the objections of a noisy minority have been allowed to drown the voices of other people vitally affected. The housewife, who will use the new shops and whose children will go to the new school, the trade union branch whose members will work on the new factory estate, the farmer, the motorist, the amenity society—these too must have their say, and when they have had it, the provisional plan may need a good deal of alteration, but it will be all the better for that since it will reflect actual needs democratically expressed. In the past, plans have been too much the plans of officials and not the plans of individuals, but I hope we are going to stop that" (432 H. of C. Official Report 962-963).

*Land.*—This means any corporeal hereditament including a building (s. 119 (1), *post*). "Building" includes any structure or erection, and any part of a building as so defined, but does not include plant or machinery comprised in a building (s. 119 (1), *post*).

*Development.*—See ss. 12 (2) and 119 (1), *post*. Note that "development" includes the making of any material change in the use of any building or other land.

*The stages by which any such development should be carried out.*—This appears to be a point on which local planning authorities will require guidance from the Ministry.

*Regulations.*—See ss. 10 (2) and 111, *post*.

*Designate as land subject to compulsory acquisition.*—Note the special provisions relating to designation contained in s. 9, *post*. It will be open to persons having an interest in any land designated by the local planning authority in the plan to lodge an objection against the designation. An owner or occupier lodging such an objection will probably be afforded an opportunity of being heard, in support of his objection, by a person appointed by the Minister for that purpose (see s. 10, *post*). Such hearings in the past have usually taken the form of local inquiries.

In Standing Committee of the House of Commons the Minister gave an indication of the position as to development by an owner; see H. of C. Official Report, S.C.D., March 4, 1947, col. 214.

The provisions relating to the compulsory acquisition of land are contained in Part IV of the Act, *post*.

*Any Minister.*—"Minister" includes the Treasury, the Admiralty, the Board of Trade and any other government department (s. 119 (1), *post*).

*Area of comprehensive development.*—This is a new term. Under the 1944 Act (37 Halsbury's Statutes 420) there were areas of extensive war damage and areas of bad lay-out and obsolete development. These areas are now included in the new term together with land required for the purpose of providing for the re-location of population or industry or the replacement of open space or for any other purpose specified in the plan (sub-s. (3), *ante*).

*Contiguous or adjacent.*—In a New Zealand case it was said that "the word 'contiguous' . . . is not a word of precise meaning. . . . The definition of the word 'contiguous' in standard dictionaries and the mode in which that word has been used by the most eminent judges as well as common usage all warrant its being construed in the sense of near to but not actually touching" (*Waihi Grand Junction Gold Mining Co., Ltd. v. Dudson* (1909), 29 N. Z.



L. R. 499, *per* EDWARDS, J., at p. 505). See also *Haynes v. King*, [1893] 3 Ch. 439, *per* NORTH, J., at p. 448 (strict meaning "touching"); *Southwark Revenue Officer v. Hoe (R.) & Co., Ltd.* (1930), 143 L. T. 544, *per* AVORY, J., at p. 545 (precise significance "touching").

"Adjacent" is not a word to which a precise and uniform meaning is attached by ordinary usage. It is not confined to places adjoining, and it includes a place close to or near. What degree of proximity would justify the application of the word is entirely a question of circumstances" (*Wellington Corp'n. v. Lower Hutt Corp'n.*, [1904] A. C. 773, at p. 775, *p.c.*).

*Use.*—Unless the context otherwise requires, "use" in relation to land does not include the use of land by the carrying out of any building or other operations thereon (s. 119 (1), *post*). But here the context otherwise requires; see sub-s. (1), *ante*.

*Modification.*—It would seem that the power to modify would include a power to cure any legal defect in the plan (*Minister of Health v. R., Ex parte Yaffé*, [1931] A. C. 494; also *Re Bowman, South Shields (Thames Street) Clearance Order*, 1931, [1932] 2 K. B. 621). This power to modify should be borne in mind in drafting objections or representations: it may be advisable to state clearly the nature of the modifications which it is desired that the Minister should make.

*If it appears to him.*—See note to s. 4, *ante*.

*Agricultural land within the meaning of the Rating and Valuation (Apportionment) Act, 1928.*—See s. 2 (2) of that Act (14 Halsbury's Statutes 714).

*Allotment garden.*—This term is defined by the Allotments Act, 1922, s. 22 (1) (1 Halsbury's Statutes 316).

*Special parliamentary procedure.*—This means the procedure set out in the Statutory Orders (Special Procedure) Act, 1945 (38 Halsbury's Statutes 439).

*Sub-s. (5).*—This subsection may prove of special value to large county boroughs and county areas containing "areas of comprehensive development." A development plan could be submitted in respect of an area of comprehensive development only, in order that re-development could proceed without further undue delay while a plan for the rest of the local planning authority's district was being prepared.

*Definitions.*—As to "local planning authority," see ss. 4, *ante* and 119 (1), *post*. As to "statutory undertakers," see s. 119 (1), (2), *post*. For definitions of "agricultural," "local authority," "functions," "enactment," "area of extensive war damage," "area of bad layout or obsolete development," "relocation of population or industry," "replacement of open space," "National Trust," "Operational land" and "appropriate Minister," see s. 119 (1), *post*. Other definitions are referred to *supra*.

**6. Amendment of development plans.**—(1) At least once in every five years after the date on which a development plan for any area is approved by the Minister, the local planning authority shall carry out a fresh survey of that area, and submit to the Minister a report of the survey, together with proposals for any alterations or additions to the plan which appear to them to be required having regard thereto. [2247]

(2) Without prejudice to the provisions of the foregoing subsection, any local planning authority may at any time, and shall if so required by directions of the Minister, submit to the Minister proposals for such alterations or additions to the development plan relating to their area or any part thereof as appear to them to be expedient, or as may be required by those directions, as the case may be. [2248]

(3) Where proposals for alterations or additions to a development plan are submitted to the Minister under this section, the Minister may amend that plan to such extent as he considers expedient having regard to those proposals and to any other material considerations, and any such amendment may in particular provide for securing that any land previously designated by the plan as subject to compulsory acquisition shall cease to be so designated, or that any land not previously so designated shall be so designated:

Provided that the proviso to subsection (4) of the last foregoing section shall apply in relation to the amendment of a development plan by the Minister as it applies in relation to the approval of such a plan by him, and for that purpose shall have effect—

(a) as if for the reference in paragraph (a) to the date on which the plan is approved there were substituted a reference to the date on which the amendment is effected; and

(b) as if for the references in paragraphs (b) and (c) to the plan as submitted to the Minister there were substituted references to the proposals submitted to him under this section. [2249]



(4) Where, under subsection (5) of the last foregoing section, a development plan is approved with respect to a part of the area of a local planning authority, the periods of five years mentioned in subsection (1) of this section shall run from the date on which development plans in respect of the whole of the area of the local planning authority have been approved by the Minister but without prejudice to the provisions of subsection (2) of this section. [2250]

*Effect of section.*—The provisions of this section do not imply that a development plan shall only plan the area for a period of about five years ahead. Development plans prepared now will in many cases determine the character and lay-out of towns for perhaps a century or even longer. But amendments, some minor and some major, will prove to be necessary from time to time. This section, while providing that proposals for alterations or additions to a plan may be submitted at any time, ensures that a thorough review of the area and plan shall take place at least once in every five years.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Fresh survey.*—If, after the first survey, administrative arrangements are made to keep up to date the data obtained, the making of this fresh survey will be little more than a nominal task.

*Shall if so required.*—Note the powers conferred on the Minister by the next section. An owner of land or a body representing particular interests (*e.g.* of local traders) desiring to secure an amendment to the plan, could approach the local planning authority in the first instance with a request that the authority submit a proposal to the Minister. If the local planning authority refused so to do, the case for amendment could then be submitted directly to the Minister, who, if of opinion that a strong *prima facie* case for amendment had been made out, would be able to direct the local planning authority to submit a proposal to him.

*Proposals for alterations or additions.*—For procedure, see s. 10, *post*.

*Designated . . . as subject to compulsory acquisition.*—See s. 5, *ante*.

*Definitions.*—As to “development plan,” ss. 5, *ante*, and 119 (1), *post*. As to “local planning authority,” see ss. 4, *ante*, and 119 (1), *post*.

## 7. Additional powers of Minister with respect to development plans.—

(1) Where, by virtue of any of the foregoing provisions of this Part of this Act, or of any directions of the Minister thereunder, any development plan, report or proposals for alterations or additions to a development plan are required to be submitted to the Minister, then—

- (a) if within the period prescribed in that behalf by those provisions or directions no such plan, report or proposals, or no such plan or proposals satisfactory to the Minister, have been so submitted; or
- (b) if at any time the Minister is satisfied, after holding a local inquiry, that the local planning authority are not taking the steps necessary to enable them to submit such a plan, report or proposals within that period,

the Minister may, after carrying out any survey which appears to him to be expedient for the purpose, make such development plan, or as the case may be, amend the development plan to such extent, as he considers expedient. [2251]

(2) Where, under the foregoing provisions of this section, the Minister has power to make or amend a development plan, he may, if he thinks fit, authorise the local planning authority for any neighbouring area, or any other local planning authority which appears to the Minister to have an interest in the proper planning of the area concerned, to submit such a plan to him for his approval, or, as the case may be, to submit to him proposals for the amendment of the plan, and to carry out any survey of the land which appears to him to be expedient for the purpose, and may approve any plan so submitted either without modification or subject to such modifications as he considers expedient, or, as the case may be, may amend the plan to such extent as he considers expedient having regard to the proposals so submitted and to any other material considerations. [2252]

(3) The foregoing provisions of this Part of this Act shall, so far as applicable, apply to the making, approval or amendment of development plans under this section, and to plans so made, approved or amended, as they apply to the approval or amendment of development plans under those provisions, and to plans approved or amended thereunder. [2253]

(4) Any expenses incurred by the Minister under this section in connection with the making or amendment of a plan with respect to the area, or any part of the area, of a local planning authority, shall be paid in the first instance out of moneys provided by Parliament, but so much of those expenses as may be certified by the Minister to have been incurred in the performance of functions of that authority shall on demand be repaid by that authority to the Minister. [2254]

(5) Where, under this section, a plan, or proposals for the amendment of a plan, are authorised to be submitted to the Minister by the local planning authority for any area other than the area in which the land is situated, any expenses reasonably incurred in that behalf by the said authority, as certified by the Minister, shall be repaid to that authority by the local planning authority for the area in which the land is situated. [2255]

*Effect of section.*—Under this section if the local planning authority fail to make or amend a plan the Minister can do it himself or authorise another local planning authority to do it. It is seldom that resort has to be made to powers of the kind conferred by this section: the fact that the powers exist usually provides a sufficient stimulus to laggard authorities.

As to default powers of the Minister, see also s. 100, *post*.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Report.*—See s. 5 (1), *ante*.

*Is satisfied.*—See note to s. 4, *ante*.

*Local inquiry.*—See s. 104, *post*, and notes thereto.

*If he thinks fit.*—This imports the exercise of a discretion (*Roberts v. Hopwood*, [1925] A. C. 578), but only in very exceptional circumstances would the Courts be likely to interfere with the exercise of a discretion of this nature.

*Local planning authority.*—For definition, see ss. 4, *ante*, and 119 (1), *post*. Note that it is only a local planning authority, not any local authority, who may be so authorised.

*Definitions.*—As to “development plan,” see ss. 5, *ante*, and 119 (1), *post*. For definitions of “land” and “functions,” see s. 119 (1), *post*.

**8. Incorporation in development plans of orders relating to trunk roads and new towns.**—(1) Where an order is made by the Minister of Transport in accordance with the Second Schedule to the Trunk Roads Act, 1946, directing that any road proposed to be constructed by him shall become a trunk road, or authorising him to construct or improve any road under section four of that Act, any development plan approved or made under this Act which relates to land on which a road is to be constructed or improved in accordance with that order shall have effect as if the provisions of that order were included in the plan. [2256]

(2) Where an order is made by the Minister under section one of the New Towns Act, 1946, designating any area as the site of a new town under that Act, any development plan approved or made under this Act which relates to land in that area shall have effect as if the provisions of that order were included in the plan. [2257]

(3) Nothing in this section shall be construed as prohibiting the inclusion in a development plan, as approved or made by the Minister or as for the time being amended, of provisions defining the line of roads proposed to be constructed by the Minister of Transport in accordance with any such order as is mentioned in subsection (1) of this section, or areas designated as the sites of new towns by any such order as is mentioned in subsection (2) of this section, or of provisions defining land as likely to be made the subject of any such order as aforesaid. [2258]

(4) Provision may be made by regulations under this Act for enabling any proceedings preliminary to the making of any such order as is mentioned in subsection (1) or subsection (2) of this section to be taken concurrently with proceedings required under this Act to be taken in connection with the approval or making of a development plan relating to land to which any such order applies or in connection with any amendment of a development plan rendered necessary or desirable in consequence of any such order. [2259]

*General note.*—Among other things the development plan (see s. 5, *ante*) will be a land utilisation plan, and the fundamental idea is that it should show everything known or intended with regard to the land in the area which it covers. The inclusion of the orders in the plan is one way of giving permanent publicity to the orders: it puts them on permanent record locally. As regards land likely to be included in an order of the kind mentioned in this section, this may be included under the general powers conferred by s. 5, *ante*.

In dealing with an application for permission to develop land, the local planning authority is to have regard to the provisions of the development plan so far as material thereto and to any other material considerations (s. 14 (1), *post*).

*Trunk Roads Act, 1946, s. 4.*—39 Halsbury's Statutes 154. For partial repeal, see s. 113 and Sched. IX, Part II, *post*.

*Approved or made.*—A development plan will normally be made by the local planning authority and approved by the Minister but in certain circumstances (if the local planning authority are in default) the Minister may make the plan himself (s. 7 (1), *ante*).

*Land.*—This term is widely defined in s. 119 (1), *post*.

*Regulations.*—See s. 111, *post*.

*Concurrently.*—The main point about this is that one local inquiry could be made to serve for all purposes with a consequent saving of time and expense. The idea is not new (cf. Town and Country Planning Act, 1944, Sched. II, Part I, para. 6; 37 Halsbury's Statutes 485).

*Orders made under this Act.*—Note the provisions of s. 111, *post*.

**9. Modification of development plans in relation to land designated as subject to compulsory acquisition.**—(1) Where any land is designated by a development plan as subject to compulsory acquisition, then if at the expiration of twelve years from the date on which the plan, or the amendment of the plan, by virtue of which the land was first so designated came into operation, any of that land has not been acquired by a Minister, local authority or statutory undertakers who could be authorised to acquire it compulsorily under the provisions of this Act, any owner of the land may, within the time and in the manner prescribed by regulations under this Act, serve on the local planning authority a notice requiring his interest in the land to be so acquired. [2260]

(2) Where any such notice is served as aforesaid, then unless within six months after the service of the notice either—

- (a) notice to treat in respect of the interest to which the notice relates has been served by any such Minister, authority or undertakers as aforesaid; or
- (b) an offer has been made to the owner of the said interest by any such Minister, local authority or undertakers to acquire it on terms that the price payable therefor shall be equal to (and shall be determined, in default of agreement, in like manner as) the compensation which would be payable in respect of that interest if it were acquired compulsorily,

the development plan shall have effect, after the expiration of the said six months, as if the land were not designated as subject to compulsory acquisition. [2261]

(3) The power conferred by subsection (2) of section five of the Acquisition of Land (Assessment of Compensation) Act, 1919, to withdraw a notice to treat shall not be exercisable in the case of a notice to treat which is served as mentioned in paragraph (a) of the last foregoing subsection. [2262]

(4) Where any land is designated by a development plan as subject to compulsory acquisition by the appropriate local authority (not being land comprised in an area defined by the plan as an area of comprehensive development) then if permission is granted under Part III of this Act for any development of the land so designated, or any part thereof, and that development is carried out in accordance with the permission so granted, the development plan shall have effect as if the land to which the permission relates were not designated as subject to compulsory acquisition:

Provided that where any such permission as aforesaid is granted for a limited period only, the provisions of this subsection shall cease to have effect in relation to the land at the expiration of that period. [2263]

(5) In relation to land being agricultural land within the meaning of the Rating and Valuation (Apportionment) Act, 1928, subsection (1) of this section shall have effect as if for the words "twelve years" there were substituted the words "eight years." [2264]

*Effect of section.*—This section enables an owner of land which has been designated in a development plan, but which has not been acquired at the expiration of twelve years (in the case of agricultural land, eight years) from the date on which it was *first* designated, to require the purchase of his interest or the removal of the designation.

*Designated.*—See s. 5, *ante*.

*Regulations.*—As to regulations and orders generally, see s. 111, *post*.

*Serve.*—As to service of notices, see s. 105, *post*.

*Months.*—This means calendar months (Interpretation Act, 1889, s. 3; 18 Halsbury's Statutes 993).

*Notice to treat.*—See s. 18 of the Lands Clauses Consolidation Act, 1845 (2 Halsbury's Statutes 1120), incorporated in the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Halsbury's Statutes 52).

*Compensation.*—See Part V, title LAND, ACQUISITION, SALE, ETC. OF, *ante*.

*Acquisition of Land (Assessment of Compensation) Act*, 1919, s. 5 (2).—2 Halsbury's Statutes 1179.

*Area of comprehensive development.*—See s. 5 (2) (c), *ante*. It is not contemplated that a local planning authority will grant permission for development to be carried out on land designated in the plan as an area of comprehensive development. If, however, such permission were granted the land would still remain designated.

*Rating and Valuation (Apportionment) Act*, 1928.—14 Halsbury's Statutes 713.

*Permission granted for a limited period only.*—As to the meaning of this phrase, see s. 14 (2), *post*.

*Definitions.*—As to "development plan," see ss. 5, *ante*, and 119 (1), *post*; and as to "local planning authority," see ss. 4, *ante*, and 119 (1), *post*. For definitions of "land," "a Minister," "local authority," "statutory undertakers" and "owner," see s. 119 (1), *post*.

**10. Supplementary provisions as to development plans.**—(1) A local planning authority shall, before preparing a development plan relating to any land comprised in any county district, or proposals for alterations or additions to any such plan, consult with the council of that district and shall, before submitting any such plan or proposals to the Minister, give to that council an opportunity to make representations with respect thereto and consider any representations so made. [2265]

(2) Provision may be made by regulations under this Act with respect to the form and content of development plans, and with respect to the procedure to be followed in connection with the preparation, submission, approval, making and amendment of such plans, and such regulations shall in particular make provision for securing—

- (a) that notice shall be given by advertisement in the London Gazette and in at least one newspaper circulating in the area concerned of the submission to the Minister of any such plan or of proposals for the amendment of any such plan, and of any proposal by the Minister to make or amend such a plan and of the place or places where copies of the plan or proposals as so submitted, or of any such proposal of the Minister, may be inspected.
- (b) that objections and representations duly made in accordance with the regulations shall be considered, and that such local inquiries or other hearings as may be prescribed by the regulations shall be held, before such a plan is approved, made or amended by the Minister; and
- (c) that copies of any such plan as approved or made by the Minister, including any amendments thereof, shall be available for inspection by the public, and that copies thereof (including reproductions on such scale as may be appropriate of any relevant maps) shall be available on sale to the public at a reasonable cost. [2266]

(3) If as the result of any objections or representations considered, or local inquiry or other hearing held, in connection with a development plan or proposals for amendment of such a plan submitted to or prepared by the Minister under this Part of this Act, the Minister is of opinion that the local planning authority or any other authority or person ought to be consulted before he decides whether to approve or make the plan either with or without

modifications, or to amend the plan, as the case may be, he shall consult that authority or person, but shall not be under any obligation to consult any other authority or person, or to afford any opportunity for further objections or representations or to cause any further local inquiry or other hearing to be held. [2267]

(4) Subject to the foregoing provisions of this section, the Minister may give directions to any local planning authority, or to local planning authorities generally—

- (a) for formulating the procedure for the carrying out of their functions under the foregoing provisions of this Part of this Act ;
- (b) for requiring them to furnish to him such information as he may require for the purpose of the exercise of any of his functions under those provisions. [2268]

(5) In the application of the Statutory Orders (Special Procedure) Act, 1945, to any order made in pursuance of paragraph (c) of the proviso to sub-section (4) of section five of this Act, any requirements imposed by regulations under this section with respect to the publication of notices and the consideration of objections in relation to the development plan shall be deemed for the purposes of section two of that Act to be requirements with respect to proceedings preliminary to the making of the order. [2269]

*Effect of section.*—Sub-s. (1) ensures that councils of county districts will be consulted regarding the planning of their districts and secures for them an opportunity of making representations to the local planning authority before the development plan or proposals for alterations or additions to any such plan are submitted to the Minister.

Regulations made for the purposes of sub-s. (2) will deal with the form and content of development plans and the procedure to be followed with respect to the preparation, etc. of such plans.

But for the provisions contained in sub-s. (3), it would have been possible for the Courts to hold that, while the Minister could obtain information in any way he thought best, he must give those who are parties to the controversy a fair opportunity of correcting or contradicting any relevant statement prejudicial to their view (see *Board of Education v. Rice*, [1911] A. C. 179, per Lord LOREBURN, at p. 182). If this rule could have been applied to the functions of the Minister under this section, the Minister might have found himself obliged, after consulting the local planning authority or some association or person, to make a statement with regard to such consultations and afford an opportunity for further objections or representations and in some cases cause a further local inquiry or other hearing to be held.

*County district.*—I.e. non-county boroughs, urban districts and rural districts. Many county district councils have already incurred substantial expense in preparing, either by themselves or as a constituent authority of a joint committee, draft planning schemes for their districts. Doubtless they will be pleased to make the results of their labours available to their successors. There may, however, be some features of their schemes which they would like to see preserved in the development plan; if so, they should not fail to take up the matter with the local planning authority at an early date.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Regulations.*—See also s. 111, *post*.

*Local inquiries.*—See s. 104, *post*. As to the service of notices, see s. 105, *post*.

*Or other hearing.*—The regulations may provide that the Minister shall cause hearings to be held which are not local inquiries within the meaning of s. 104, *post*. (Cf. Town and Country Planning Act, 1944, Sched. I, Part I, para. 5 ; 37 Halsbury's Statutes 485.)

*Modifications.*—It seems that the power to modify includes a power to cure any legal defect in the plan (*Minister of Health v. R., Ex parte Yaffé*, [1931] A. C. 494).

*He shall consult.*—This does not, of course, mean that the Minister himself must do the consulting. See, generally, the observations of Lord GREENE, M.R., in *Carltona, Ltd. v. Commissioners of Works*, [1943] 2 All E. R. 560.

See also *Local Government Board v. Arlidge*, [1915] A. C. 120, and *Robinson v. Minister of Town and Country Planning*, [1947] 1 All E. R. 851, *post*.

*Definitions.*—As to "local planning authority," see ss. 4, *ante*, and 119 (1), *post*; as to "development plan," see ss. 5, *ante*, and 119 (1), *post*. For definitions of "land" and "function," see s. 119 (1), *post*.

**11. Validity and date of operation of development plans.**—(1) Immediately after a development plan has been approved or made or amended by the Minister under this Part of this Act, the local planning authority shall publish in such manner as may be prescribed by regulations under this Act a notice stating that the plan has been approved, made, or amended, as the case may be, and naming a place where a copy of the plan or of the plan, as amended, may be seen at all reasonable hours, and shall serve a like notice on any person by whom an objection or representation was duly made to the proposed

plan or amendment, and who has sent to the authority a request in writing to serve him with the notice required by this subsection, specifying an address for service, and on such other persons, if any, as may be required by general or special directions given by the Minister. [2270]

(2) If any person aggrieved by the plan or by the amendment, as the case may be, desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of this Act, or on the ground that any requirement of this Act or any regulation made thereunder has not been complied with in relation to the approval or making of the plan, or, as the case may be, in relation to the making of the amendment, he may, within six weeks from the date on which the notice required by the last foregoing subsection is first published, make an application to the High Court, and on any such application the Court—

- (a) may by interim order suspend the operation of the plan or amendment, as the case may be, or of any provision contained therein either generally or in so far as it affects any property of the applicant, until the final determination of the proceedings; and
- (b) if satisfied that the plan or amendment, or any provision contained therein, is not within the powers of this Act, or that the interests of the applicant have been substantially prejudiced by a failure to comply with any such requirement as aforesaid, may quash the plan or amendment or any provision contained therein either generally or in so far as it affects any property of the applicant. [2271]

(3) Subject to the provisions of the last foregoing subsection, a development plan or an amendment of a development plan shall not, either before or after it has been approved or made, be questioned in any legal proceedings whatsoever, and shall become operative on the date on which the notice required by this section is first published. [2272]

(4) Where, under paragraph (c) of the proviso to subsection (4) of section five of this Act, any land to which a development plan relates is designated as subject to compulsory acquisition in pursuance of an order to which the Statutory Orders (Special Procedure) Act, 1945, applies, then—

- (a) if that order is confirmed by Act of Parliament under section six of that Act, subsections (2) and (3) of this section shall not apply to the plan so far as it so designates that land; and
- (b) in any other case, this section shall have effect in relation to the plan, so far as it so designates that land, as if in subsection (2) for the reference to the date on which the notice required by subsection (1) is first published there were substituted a reference to the date on which the order becomes operative under the said section six, and as if in subsection (3) the words from “and shall become operative” to the end of the subsection were omitted. [2273]

*Effect of section.*—The short effect of this section is to substitute the remedy provided therein for the remedies which would otherwise have existed at common law.

In the absence of special statutory provision such as that contained in this section, a development plan could have been challenged in the Courts by a writ claiming a declaration that it was *ultra vires* and an injunction to restrain the planning authority from having regard to it. It is also probable that the act of making a development plan would have been held sufficiently judicial to support an application for an order of certiorari or prohibition where it was alleged that the order had been made either without or in excess of jurisdiction (see *R. v. Electricity Commissioners, Ex parte London Electricity Joint Committee Co. (1920), Ltd.*, [1924] 1 K. B. 171).

The plan can only be challenged on one or both of the following grounds:—

- (a) that it is not within the powers of the Act;
- (b) that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the approval or making of the plan. (If this ground is relied on, it will also be necessary to satisfy the Court that the interests of the applicant have been substantially prejudiced by the non-compliance.)

The application should be made in accordance with the Rules of the Supreme Court; the notice of motion and the affidavits in support thereof should state the matters of complaint



and objection with precision and particularity (*Franklin v. Minister of Town and Country Planning*, [1947] 1 All E. R. 612).

*Made*.—This word relates to a case where the Minister himself makes the plan (see s. 7 (1), *ante*).

*The Minister*.—The Minister of Town and Country Planning (s. 1, *ante*).

*Regulations*.—See s. 111, *post*.

*Serve a like notice*.—As to service of notices, see s. 105, *post*.

*Statutory Orders (Special Procedure) Act*, 1945.—38 Halsbury's Statutes 439.

*Definitions*.—As to "development plan," see ss. 5, *ante*, and 119 (1), *post*; and as to "local planning authority," see ss. 4, *ante*, and 119 (1), *post*. As to "designated," see s. 5, *ante*.

### PART III

#### CONTROL OF DEVELOPMENT, ETC.

##### *Permission to develop land*

**12. Obligation to obtain permission for development.**—(1) Subject to the provisions of this section and to the following provisions of this Act, permission shall be required under this Part of this Act in respect of any development of land which is carried out after the appointed day. [2274]

(2) In this Act, except where the context otherwise requires, the expression "development" means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land :

Provided that the following operations or uses of land shall not be deemed for the purposes of this Act to involve development of the land, that is to say :—

- (a) the carrying out of works for the maintenance, improvement or other alteration of any building, being works which affect only the interior of the building or which do not materially affect the external appearance of the building ;
- (b) the carrying out by a local highway authority of any works required for the maintenance or improvement of a road, being works carried out on land within the boundaries of the road ;
- (c) the carrying out by any local authority or statutory undertakers of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose ;
- (d) the use of any buildings or other land within the curtilage of a dwelling-house for any purpose incidental to the enjoyment of the dwelling-house as such ;
- (e) the use of any land for the purposes of agriculture or forestry (including afforestation), and the use for any of those purposes of any building occupied together with land so used ;
- (f) in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Minister under this section, the use thereof for any other purpose of the same class.

[2275]

(3) For the avoidance of doubt it is hereby declared that for the purposes of this section—

- (a) the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part thereof which is so used ;
- (b) the deposit of refuse or waste materials on land involves a material change in the use thereof, notwithstanding that the land is comprised in a site already used for that purpose, if the superficial area or the height of the deposit is thereby extended :

Provided that nothing in paragraph (b) of this subsection shall be deemed to require permission in respect of the deposit of refuse or waste materials



on a site already used for that purpose if the height of the deposit does not exceed the level of the land adjoining such site, and the superficial area of the deposit is not thereby extended. [2276]

(4) Without prejudice to the provisions of any regulations made under the provisions of this Act relating to the control of advertisements, the use for the display of advertisements of any external part of a building which is not normally used for that purpose shall be treated for the purposes of this section as involving a material change in the use of that part of the building. [2277]

(5) Notwithstanding anything in this section, permission shall not be required under this Part of this Act—

- (a) in the case of land which, on the appointed day, is being used temporarily for a purpose other than the purpose for which it is normally used, in respect of the resumption of the use of the land for the last-mentioned purpose;
- (b) in the case of land which, on the appointed day, is normally used for one purpose and is also used on occasions, whether at regular intervals or not, for any other purpose, in respect of the use of the land for that other purpose on similar occasions after the appointed day;
- (c) in the case of land which on the appointed day is unoccupied, in respect of the use of the land for the purpose for which it was last used:

Provided that—

- (i) in determining for the purposes of paragraph (a) of this subsection the purposes for which land was normally used and in determining for the purposes of paragraph (c) of this subsection the purposes for which land was last used no account shall be taken of any use of the land begun in contravention of previous planning control within the meaning of section seventy-five of this Act;
- (ii) paragraph (c) of this subsection shall not apply to land which was unoccupied on the seventh day of January nineteen hundred and thirty-seven and has not been occupied since that date. [2278]

*Application made before the appointed day but not determined.*—See Sched. X, *post*, relating to transitory provisions.

*Permission shall be required.*—For the steps which can be taken by a local planning authority where development has been commenced without permission, see s. 23, *post*.

*Appointed day.*—This means such day as the Minister may by order appoint (s. 119 (1), *post*). July 1, 1948, has been so appointed (S.I. 1948 No. 213).

*Or other operations.*—The *ejusdem generis* rule appears to apply. "When general words follow specific words previously enumerated, they must be construed to mean something of the same kind as those which went before" (*East London Waterworks Co. v. Mile End Old Town Trustees* (1851), 17 Q. B. 512, *per* COLERIDGE, J.).

*In, on, over or under land.*—These words relate to all the operations mentioned—building, engineering, mining or other operations. See *Great Western Ry. Co. v. Swindon and Cheltenham Ry. Co.* (1884), 9 App. Cas. 787, *per* Lord BRAMWELL.

*Material change.*—These words provide scope for differences of opinion in particular cases. In deciding whether change of use is a material change, regard must be had to the scope and object of the Act. The test appears to be "Is the change 'material' from a planning standpoint?" In answering this question it seems proper to have regard to the effect of the change on, for example, the amenities of the neighbourhood. One industrial use may be quite unobjectionable; another may be seriously detrimental to the amenities of the neighbourhood.

As to applications to determine whether permission is required, see s. 17, *post*.

*Curtilage.*—"A garden, yard, field or piece of void ground, lying near and belonging to the messuage" (*Termes de la Ley*). Speaking in the House of Lords with reference to this word during the passage of the Bill, the Lord Chancellor said:—

"This is one of those cases in which, broadly speaking, we all know what we mean, but none of use can quite define it. . . . It covers the garden, but not the paddock, but there may be cases of a small paddock where it should be included. Vague though the word is, I cannot think of anything better . . . we must leave it to the judges to provide us with a set of rules as to what is and what is not a curtilage" (149 H. of L. Official Report 556).

*Occupied together with land so used.*—See *Sanders v. Searson, Sanders v. Smith* (1880), 45 J. P. 22, *per* GROVE, J., at p. 23.

*Sub-s. (3), para. (a).*—The following observations of the Minister with reference to the

conversion of a single dwelling-house into two or more separate dwelling-houses will be of interest :—

"Admittedly at the present time with the shortage of houses, local authorities ought to be lenient in the direction of permitting conversion from single family to multi-family dwellings. Of course they ought. On the other hand—and here I speak with some experience, as a former chairman of a town planning committee—a great deal of good can be done by the exercise of this control, in ensuring that the conversion is properly and decently carried out. Very often people come along and make applications for conversion which is entirely unsatisfactory, which would provide bad living accommodation for the families whom they are proposing to house. The exercise of control enables this proposed bad development to be converted into good development" (H. of C. Official Report, S.C.D., March 6, 1947, col. 301).

Such conversions, if permitted, are excluded from the development charge provisions of Part VII of the Act (see Sched. III, Part I, *post*).

*Regulations.*—For the general provisions as to regulations, see s. 111, *post*.

*Control of advertisements.*—See s. 31, *post*.

*In contravention of previous planning control.*—For the meaning of this expression, see s. 75 (9), *post*.

*Definitions.*—For definitions of "building operations," "land," "use," "buildings," "local highway authority," "improvement" (in relation to a highway), "local authority," "statutory undertakers," "agriculture" and "advertisement," see s. 119 (1), *post*.

**13. Development orders.**—(1) The Minister shall by order provide for the grant of permission for the development of land under this Part of this Act, and such permission may be granted—

- (a) in the case of any development specified in any such order, or in the case of development of any class so specified, by that order itself ;
- (b) in any other case, by the local planning authority (or, in the cases hereinafter provided, by the Minister) on an application in that behalf made to the local planning authority in accordance with the provisions of the order. [2279]

(2) An order under subsection (1) of this section (hereinafter called a "development order") may be made either as a general order applicable (subject to such exceptions as may be specified therein) to all land, or as a special order applicable only to such land as may be so specified, and the permission granted by any such order may be granted either unconditionally or subject to such conditions or limitations as may be so specified. [2280]

(3) Without prejudice to the generality of the last foregoing subsection, a development order which grants permission for any development may—

- (a) where permission is thereby granted for the erection, extension or alteration of any buildings, require the approval of the local planning authority to be obtained with respect to the design or external appearance thereof ;
- (b) where permission is thereby granted for development of any specified class, enable the Minister or the local planning authority to direct that that permission shall not apply either in relation to development in any particular area or in relation to any particular development. [2281]

(4) For the purpose of enabling development to be carried out in accordance with permission granted under this Part of this Act, or otherwise for the purpose of promoting proper development in accordance with the development plan, a development order may direct that any enactment passed before the passing of this Act, or any regulations, orders or byelaws made (whether before or after the passing of this Act) under any such enactment, shall not apply to any development specified in the order, or shall apply thereto subject to such modifications as may be so specified. [2282]

(5) Every development order shall be laid before Parliament immediately after it is made, and if either House within the period of forty days after the order is so laid before it resolves that the order be annulled, the order shall thereupon cease to have effect, but without prejudice to the validity of anything previously done thereunder or to the making of a new order :

Provided that, without prejudice to the foregoing provision, where any such order makes provision for excluding or modifying any enactment contained in a public general Act (other than any of the excepted enactments specified in the Second Schedule to this Act) the order shall be of no effect until that provision is approved by resolution of each House of Parliament.

[2283]

(6) In reckoning for the purpose of the last foregoing subsection any such period of forty days, no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days. [2284]

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Order.*—For the general provisions relating to orders under this Act, see s. 111, *post*. Note also s. 14 (3), *post*, as to provisions which may be inserted in a development order.

*Permission for the development of land.*—The permission for development required by s. 12, *ante*, and dealt with further in this section is termed "planning permission" (s. 119 (1), *post*).

*Applications for planning permission.*—Note that these applications are to be made to the local authority for the area in accordance with the provisions of the order (see s. 34, *post*, and notes thereto).

*Subject to such conditions or limitations as may be so specified.*—There is no right of appeal against conditions or limitations imposed by an order, either general or special. Every development order, however, has to be laid before Parliament (sub-s. (5), *ante*).

*Sub-s. (3), para. (b).*—It will be necessary to inquire of the local planning authority whether the Minister or the authority themselves have directed that the permission shall not apply. This provision bears a similarity to Article 5 of the Town and Country Planning (General Interim Development) Order, 1946 (39 Halsbury's Statutes 699).

*Enactment.*—For definition, see s. 119 (1), *post*. Similar provision was made with respect to planning schemes by s. 11 of the Town and Country Planning Act, 1932 (25 Halsbury's Statutes 484), and with respect to interim development orders by s. 39 of the Town and Country Planning Act, 1944 (37 Halsbury's Statutes 465).

*Effect of the Statutory Instruments Act, 1946.*—This Act came into full operation on January 1, 1948 (see S.I. 1948 No. 3).

Documents made after its commencement and in exercise of certain statutory powers conferred by Acts passed before its commencement are "statutory instruments" regulated by the Act (Statutory Instruments Act, 1946, s. 1 (2); 39 Halsbury's Statutes 784). The class of documents to which the Act applies is defined in a manner depending on the meaning of "statutory rules" in the Rules Publication Act, 1893 (18 Halsbury's Statutes 1017), and was not clear; however, regulations under the Statutory Instruments Act, 1946, s. 8 (1) (39 Halsbury's Statutes 788), now clarify the position as to what documents become regulated by that Act (see S.I. 1948 No. 1). Orders under the present section are statutory instruments if made on or after January 1, 1948.

Note that ss. 4-7 of the Statutory Instruments Act, 1946, have no application to documents where the so-called "affirmative resolution procedure" applies, as is the case with orders of the kind referred to in the proviso to sub-s. (5), *supra*.

*Definitions.*—As to "local planning authority," see ss. 4, *ante*, and 119 (1), *post*. For definitions of "land," "erection" and "building," see s. 119 (1), *post*.

**14. Applications to local planning authorities for permission.**—(1) Subject to the provisions of this and the next following section, where application is made to the local planning authority for permission to develop land, that authority may grant permission either unconditionally or subject to such conditions as they think fit, or may refuse permission; and in dealing with any such application the local planning authority shall have regard to the provisions of the development plan, so far as material thereto, and to any other material considerations. [2285]

(2) Without prejudice to the generality of the foregoing subsection, conditions may be imposed on the grant of permission to develop land thereunder—

(a) for regulating the development or use of any land under the control of the applicant (whether or not it is land in respect of which the application was made) or requiring the carrying out of works on any such land, so far as appears to the local planning authority to be expedient for the purposes of or in connection with the development authorised by the permission;

(b) for requiring the removal of any buildings or works authorised by the permission, or the discontinuance of any use of land so authorised, at the expiration of a specified period, and the carrying out of any works required for the re-instatement of land at the expiration of that period;

and any permission granted subject to any such condition as is mentioned in paragraph (b) of this subsection is in this Act referred to as permission granted for a limited period only. [2286]

(3) Provision may be made by a development order for regulating the manner in which applications for permission to develop land are to be dealt with by local planning authorities, and in particular—

- (a) for enabling the Minister (or, in the case of development affecting trunk roads, the Minister of Transport) to give directions restricting the grant of permission by the local planning authority, during such period as may be specified in the directions, in respect of any such development, or in respect of development of any such class, as may be so specified ;
- (b) for authorising the local planning authority, in such cases and subject to such conditions as may be prescribed by the order, or by directions given by the Minister thereunder, to grant permission for development which does not accord with the provisions of the development plan ;
- (c) for requiring the local planning authority, before granting or refusing permission for any development, to consult with such authorities or persons as may be prescribed by the order or by directions given by the Minister thereunder ;
- (d) for requiring the local planning authority to give to any applicant for permission, within such time as may be prescribed by the order, such notice as may be so prescribed as to the manner in which his application has been dealt with ;
- (e) for requiring the local planning authority to furnish to the Minister, and to such other persons as may be prescribed by or under the order, such information as may be so prescribed with respect to applications for permission made to them, including information as to the manner in which any such application has been dealt with. [2287]

(4) Without prejudice to any provisions included in the development order by virtue of the last foregoing subsection for restricting the grant of permission by local planning authorities, an application to the local planning authority for permission to develop land by the erection thereon of an industrial building of any class prescribed by regulations made for the purposes of this subsection by the Board of Trade shall be of no effect unless it is certified by the Board that the development in question can be carried out consistently with the proper distribution of industry, and a copy of the certificate is furnished to the local planning authority together with the application :

Provided that—

- (a) no such certificate as aforesaid shall be required in respect of the erection of any industrial building which will have an aggregate floor space not exceeding five thousand square feet ; and
- (b) the regulations made by the Board for the purposes of this subsection may direct that no such certificate as aforesaid shall be required in respect of the erection, in any area prescribed by or under the regulations, of industrial buildings of any such class as may be so prescribed. [2288]

(5) Every local planning authority shall keep, in such manner as may be prescribed by the development order, a register containing such information as may be so prescribed with respect to applications for permission made to that authority, including information as to the manner in which such applications have been dealt with ; and every such register shall be available for inspection by the public at all reasonable hours. [2289]

*Position of London.*—For special provisions relating to London, see s. 114, *post*.

*Decisions of the authority.*—In *R. v. Hendon R. D. C., Ex parte Chorley*, [1933] 2 K. B. 696, it was held that an interim development decision of a district council was a judicial and not merely an executive decision and that therefore a writ of certiorari would lie. In that case one of the members of the council whose duty it was to decide judicially was shown to be disqualified by bias and the rule was therefore made absolute.

*Subject to such conditions as they think fit.*—Some degree of care should be exercised in drafting conditions: if the terms of the conditions are vague and uncertain they may prove unenforceable.

*Shall have regard to the development plan.*—If the development plan has not become operative, the local planning authority must have regard to any directions which may be given them by the Minister as to the provisions to be included in such a plan and, subject to any such directions, they are to have regard to the provisions which in their opinion will be required to be so included for securing the proper planning of the area (s. 36, *post*). See also the provisions of sub-ss. (3) (c) and (4) of the present section, *ante*.

It would seem that a local planning authority must not grant permission for development which would not be in accordance with the plan, unless authorised by the Minister to do so either under the development order or directions issued thereunder (sub-ss. (3) (b), *ante*).

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Consult.*—It is probable that county councils, as local planning authorities, will be required to consult with the district council in whose district the land in respect of which planning permission is sought is situated.

*Notice to the applicant of the manner in which his application has been dealt with.*—Under the earlier Acts an application for interim development permission was deemed to have been refused if the applicant was not informed in writing within two months of the decision of the interim development authority.

*Furnish . . . information.*—Similar provision was made by the Town and Country Planning (Interim Development) Act, 1943, s. 6 (2) (36 Halsbury's Statutes 247), and the Town and Country Planning Act, 1944, s. 31 (2) (37 Halsbury's Statutes 460); cf. s. 10 (4) (b), *ante*.

*Certified by the Board of Trade.*—As to the exercise of functions by the Board of Trade under this Act, see s. 116, *post*.

*Regulations and orders.*—For the general provisions applicable, see s. 111, *post*.

*Definitions.*—As to "local planning authority," see ss. 4, *ante*, and 119 (1), *post*. As to "develop," see ss. 12, *ante*, and 119 (1), *post*; for "development plan," see ss. 5, *ante*, and 119 (1), *post*; and for "development order," see ss. 13, *ante*, and 119 (1), *post*. For definitions of "land," "use," "buildings or works," "erection" and "industrial building," see s. 119 (1), *post*.

**15. Reference of applications to Minister.**—(1) The Minister may give directions to any local planning authority, or to local planning authorities generally, requiring that any application for permission to develop land, or all such applications of any class specified in the directions, shall be referred to the Minister instead of being dealt with by the local planning authority, and any such application shall be so referred accordingly. [2290]

(2) Where an application for permission to develop land is referred to the Minister under this section, the provisions of subsections (1) and (2) of the last foregoing section shall apply, subject to any necessary modifications, in relation to the determination of the application by the Minister as they apply in relation to the determination of such an application by the local planning authority:

Provided that before determining any such application the Minister shall, if either the applicant or the local planning authority so desire, afford to each of them an opportunity of appearing before and being heard by a person appointed by the Minister for the purpose. [2291]

(3) The decision of the Minister on any application referred to him under this section shall be final. [2292]

*General note.*—Similar provision was made with respect to interim development applications by s. 6 of the Town and Country Planning (Interim Development) Act, 1943 (36 Halsbury's Statutes 247).

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Directions.*—Like orders and regulations, directions lawfully given have the same force as the Statute under which they are made, and must be obeyed. Where a direction has been given under this section, the local planning authority have no jurisdiction to consider an application to which the direction relates and, if they purport to do so, their decision will be null and void and of no effect.

*If either the applicant or the local planning authority so desire.*—Note that it is not merely the applicant who may require a hearing but also the local planning authority.

*An opportunity of appearing before and of being heard.*—This hearing need not necessarily take the form of a public local inquiry, but in the past such hearings have taken this form.

It is not to be assumed that in these cases the Minister has made up his mind beforehand. Even if he has formed a provisional view, it will be subject to anything the applicant or local planning authority may urge either in their statements in writing or orally at the hearing.

*The decision of the Minister shall be final.*—But not if the Minister were to act in excess of jurisdiction (see *R. v. Minister of Health*, [1939] 1 K. B. 232; [1938] 4 All E. R. 32).

*Definitions.*—As to “local planning authority,” see ss. 4, *ante*, and 119 (1), *post*; and as to “develop,” see ss. 12, *ante*, and 119 (1), *post*. For definition of “land,” see s. 119 (1), *post*.

**16. Appeals to Minister.**—(1) Where application is made under this Part of this Act to a local planning authority for permission to develop land, or for any approval of that authority required under a development order, and that permission or approval is refused by that authority, or is granted by them subject to conditions, then if the applicant is aggrieved by their decision he may be notice served within the time, not being less than twenty-eight days from the receipt of notification of their decision, and in the manner prescribed by the development order, appeal to the Minister :

Provided that the Minister shall not be required to entertain an appeal under this subsection in respect of the determination of an application for permission to develop land if it appears to him that permission for that development could not have been granted by the local planning authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the provisions of section fourteen of this Act and of the development order, and to any directions given under that order. [2293]

(2) Where an appeal is brought under this section from a decision of the local planning authority the Minister may allow or dismiss the appeal or may reverse or vary any part of the decision of the local planning authority, whether or not the appeal relates to that part, and deal with the application as if it had been made to him in the first instance ; and the provisions of the last foregoing section shall apply, subject to any necessary modifications, in relation to the determination of an application by the Minister on appeal under this section as they apply in relation to the determination by the Minister of an application referred to him under that section. [2294]

(3) Unless within such period as may be prescribed by the development order, or within such extended period as may at any time be agreed upon in writing between the applicant and the local planning authority, the local planning authority either—

- (a) give notice to the applicant of their decision on any application for permission to develop land, or for any approval required under a development order, made to them under this Part of this Act, or
- (b) give notice to him that the application has been referred to the Minister in accordance with directions given by him under the last foregoing section.

the provisions of subsection (1) of this section shall apply in relation to the application as if the permission or approval to which it relates had been refused by the local planning authority and as if notification of their decision had been received by the applicant at the expiration of the period prescribed by the development order or the extended period agreed upon as aforesaid, as the case may be. [2295]

(4) Provision may be made by a development order for securing that in the case of decisions by a local planning authority of such classes as may be prescribed by the order (being decisions relating to the design or external appearance of buildings or other similar matters) any appeal under this section shall lie to an independent tribunal established in accordance with the provisions of that order instead of to the Minister ; and in relation to any such appeal the foregoing provisions of this section shall apply, subject to such adaptations and modifications as may be specified in the order, as they apply in relation to appeals to the Minister thereunder. [2296]

*General note.*—This section confers a similar right of appealing to the Minister to that which existed under the previous law with respect to interim development applications. Operative schemes under the Town and Country Planning Act, 1932 (25 Halsbury's Statutes 470), always conferred a similar right of appeal in regard to applications for permission to



develop under the scheme. An appeal lies against (1) refusal to grant permission for proposed development; (2) conditions imposed on the grant of permission for proposed development; and (3) refusal to approve the design or external appearance to a building the erection or alteration of which is permitted by a development order subject to such approval being obtained.

*Service of notices.*—For the general provisions in this connection, see s. 105, *post*.

*Time for appealing.*—The appeal must be made within the time prescribed by the development order, which time must not be less than 28 days from the receipt of notification of the local planning authority's decision.

*Manner of appealing.*—The appeal must be made in the manner prescribed by the development order. In all probability the Ministry will prepare and supply to appellants printed forms of appeal.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Right of parties to be heard.*—If either the appellant or the local planning authority so desire, the Minister must afford each of them an opportunity of appearing before and being heard by a person appointed by the Minister for the purpose (sub-s. (2) and s. 15 (2), *proviso*, *ante*).

*Grounds of appeal.*—The grounds of appeal should, as a general rule, be confined to meeting the grounds of refusal and the case for the appellant must be built up to refute these grounds. It must be borne in mind, however, that the Minister in deciding an appeal may do so as if the application had been made to him in the first instance and he may vary or reverse any part of the decision of the local planning authority irrespective of whether the appeal relates to that part (sub-s. (2), *ante*). On appeal, the whole question is at large, and the appellant must be prepared to deal with any point which may affect the Minister's mind in coming to a decision.

*The hearing.*—The hearing is not bound to take the form of a local inquiry, but in the past it has usually done so.

*Applicant.*—Note that the right to appeal is conferred only on a person or persons who apply for planning permission.

*Could not have been granted by the local planning authority.*—It would seem, for instance, from s. 14 (3) (b), *ante*, that unless the Minister authorises a local planning authority, either by provision contained in a development order or by directions under a provision contained in a development order, to grant permission for development which does not accord with the provisions of the development plan, the local planning authority cannot grant such permission.

If the Minister under a provision in a development plan has given directions restricting the grant of permission by the local planning authority in respect of any such development as may be specified in the directions, then the local planning authority cannot grant permission in such circumstances and no appeal from their decision need be entertained by the Minister.

Note also the provisions contained in s. 15, *ante*.

*Sub-s. (3).*—A similar provision was enacted by the 1943 Act with regard to interim development applications (Town and Country Planning (Interim Development) Act, 1943, s. 2 (3); 36 Halsbury's Statutes 242).

*Independent tribunal.*—Note the use of these words in contrast to "the Minister." The Minister, even on an appeal, is not an independent tribunal, and the rules of conduct applicable to an independent tribunal are not applicable to him.

Provision is made for the expenses of "independent tribunals" by s. 108, *post*.

*Definitions.*—As to "local planning authority," see ss. 4, *ante*, and 119 (1), *post*; as to "development," see ss. 12, *ante*, and 119 (1), *post*; and as to "development order," see ss. 13, *ante*, and 119 (1), *post*. For definitions of "land" and "building," see s. 119 (1), *post*.

**17. Applications to determine whether permission required.**—(1) If any person who proposes to carry out any operations on land or make any change in the use of land wishes to have it determined whether the carrying out of those operations or the making of that change in the use of the land, would constitute or involve development of the land within the meaning of this Act, and, if so, whether an application for permission in respect thereof is required under this Part of this Act having regard to the provisions of the development order, he may, either as part of an application for such permission, or without any such application, apply to the local planning authority to determine that question. [2297]

(2) The foregoing provisions of this Part of this Act shall, subject to any necessary modifications, apply in relation to any application under this section and to the determination thereof as they apply in relation to applications for permission to develop land and to the determination of such applications:

Provided that where it is decided by the Minister under any of the said provisions that any operations or use to which an application under this section relates would constitute or involve development of the land, or that an application for permission is required as aforesaid in respect thereof, that decision shall not be final for the purposes of any appeal to the court under



the provisions of this Part of this Act relating to the enforcement of planning control, in relation to those operations or that use. [2298]

*Effect of section.*—This section contains a new and very useful provision in town and country planning legislation. Many cases have occurred in the past in which a person proposing to develop land has been uncertain whether, in the special circumstances of his case, he required permission or not. An application might have been made to the High Court for an appropriate declaration, but there has been a disinclination to follow this course because of the time and expense involved. In cases of doubt, therefore, applications for permission have been made and, where appeal has been made to the Minister, the appellant has been obliged to proceed on the assumption that permission was necessary, and the Minister has decided the appeal on its merits.

Now, under this section a person who wishes to develop land but is not sure whether permission is required or not will be able to apply to a local planning authority to determine the question, and against their decision an appeal will lie to the Minister.

The value of the present provision is enhanced by the proviso to sub-s. (2), *ante*. The Minister's decision on any such appeal will not be final for the purpose of any appeal to the Court under the provision of this Part of the Act relating to the enforcement of planning control. An application can be made asking the local planning authority, first, to determine whether permission is necessary, and secondly, if it is necessary, to grant permission.

The question whether or not permission is necessary will be a question of law to be determined on the facts of the case.

*By whom an application is or could be made.*—Reference should be made to the development order as soon as it is available, in order to ascertain the persons who are entitled to make application for permission.

*Development order.*—This term is defined in s. 13, *ante*. The order itself may grant permission for certain development (s. 13 (1) (a), *ante*). Note also the exemptions enacted by s. 12 (5), *ante*.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Enforcement of planning control.*—See s. 23, *post*.

*Definitions.*—As to "development," see ss. 12, *ante*, and 119 (1), *post*; and as to "local planning authority," see ss. 4, *ante*, and 119 (1), *post*. For definitions of "land" and "use," see s. 119 (1), *post*.

**18. Supplementary provisions as to grant of permission.**—(1) The power to grant permission to develop land under this Part of this Act shall include power to grant permission for the retention on land of any buildings or works constructed or carried out thereon before the date of the application, or for the continuance of any use of land instituted before that date (whether without permission granted under this Part of this Act or in accordance with permission so granted for a limited period only); and references in this Part of this Act to permission to develop land or to carry out any development of land, and to applications for such permission, shall be construed accordingly. [2299]

(2) Any such permission as is mentioned in the foregoing subsection may be granted so as to take effect from the date on which the buildings or works were constructed or carried out, or the use was instituted, or from the expiration of the said period, as the case may be. [2300]

(3) Where permission is granted under this Part of this Act for the erection of a building, the grant of permission may specify the purposes for which the building may be used; and if no purpose is so specified, the permission shall be construed as including permission to use the building for the purpose for which it is designed. [2301]

(4) Where permission to develop land is granted under this Part of this Act, then, except as may be otherwise provided by the permission, the grant of permission shall enure for the benefit of the land and of all persons for the time being interested therein, but without prejudice to the provisions of this Part of this Act with respect to the revocation and modification of permission granted thereunder. [2302]

(5) Where permission to develop land is granted under this Part of this Act for a limited period only, nothing in this Part of this Act shall be construed as requiring permission to be obtained thereunder for the resumption, at the expiration of that period, of the use of the land for the purpose for which it was normally used before the permission was granted:

Provided that in determining for the purposes of this subsection the purposes for which land was normally used before the grant of permission,

no account shall be taken of any use of the land begun in contravention of the provisions of this Part of this Act or begun before the appointed day in contravention of previous planning control within the meaning of section seventy-five of this Act. [2303]

*Effect of section.*—The Minister was advised under the 1932–1944 Acts that an application for interim development could not lawfully be made after the development had been carried out and that, if such application was in fact made and refused, he had no jurisdiction to hear an appeal against the refusal.

Sub-s. (1), *ante*, cures this defect in the law—assuming the view of the previous law taken by the Minister to be right. It must be borne in mind, however, that the present section, like nearly all the remainder of the Act, does not come into force until the appointed day, July 1, 1948 (see *infra*).

Sub-s. (2), *ante*, enables permission to be given retrospective effect in respect of development previously carried out without permission.

The next subsection authorises a permission to specify the purposes for which a building may be used: if no purposes are specified, the permission is to be construed as a permission to use the building for the purpose for which it is designed.

Sub-s. (4) provides that, *except as may be otherwise provided by the permission*, the grant of a permission shall endure for the benefit of the land and all persons for the time being interested therein, without prejudice to the powers of revocation and modification.

The words in italics are important as they indicate that, if the local planning authority think fit, they may insert in the permission terms or conditions which will prevent the permission from enduring for the benefit of the land.

Finally, it is provided by sub-s. (5), *ante*, that nothing in the present section is to be construed as requiring permission to be obtained for a resumption of the normal use of land at the expiration of a permission granted for a limited period.

*Appointed day.*—This means such day as the Minister of Town and Country Planning may by order appoint (s. 119 (1), *post*). July 1, 1948, has been so appointed (S.I. 1948 No. 213).

*Definitions.*—As to “develop,” see ss. 12, *ante*, and 119 (1), *post*; and as to “permission granted for a limited period only,” see ss. 14, *ante*, and 119 (1), *post*. For definitions of “land,” “buildings or works,” “use,” “erection” and “building,” see s. 119 (1), *post*.

### 19. Obligation to purchase land on refusal of permission in certain cases.—

(1) Where permission to develop any land is refused, whether by the local planning authority or by the Minister, on an application in that behalf made under this Part of this Act, or is granted by that authority or by the Minister subject to conditions, then if any owner of the land claims—

- (a) that the land has become incapable of reasonably beneficial use in its existing state; and
- (b) in a case where permission to develop the land was granted as aforesaid subject to conditions, that the land cannot be rendered capable of reasonably beneficial use by the carrying out of the permitted development in accordance with those conditions;
- (c) in any case, that the land cannot be rendered capable of reasonably beneficial use by the carrying out of any other development for which permission has been or is deemed to be granted under this Part of this Act, or for which the local planning authority or the Minister have undertaken to grant such permission,

he may, within the time and in the manner prescribed by regulations made under this Act, serve on the council of the county borough or county district in which the land is situated a notice (hereinafter referred to as a “purchase notice”) requiring that council to purchase his interest in the land in accordance with the provisions of this section. [2304]

(2) Where a purchase notice is served on any council under this section, that council shall forthwith transmit a copy of the notice to the Minister, and subject to the following provisions of this section the Minister shall, if he is satisfied that the conditions specified in paragraphs (a) to (c) of the foregoing subsection are fulfilled, confirm the notice, and thereupon the council shall be deemed to be authorised to acquire the interest of the owner compulsorily in accordance with the provisions of Part IV of this Act, and to have served a notice to treat in respect thereof on such date as the Minister may direct:

Provided that—

- (a) if it appears to the Minister to be expedient so to do, he may, in lieu of confirming the purchase notice, grant permission for the development in respect of which the application was made or, where permission for that development was granted subject to conditions, revoke or amend those conditions so far as appears to him to be required in order to enable the land to be rendered capable of reasonably beneficial use by the carrying out of that development ;
- (b) if it appears to the Minister, that the land, or any part of the land, could be rendered capable of reasonably beneficial use within a reasonable time by the carrying out of any other development for which permission ought to be granted, he may, in lieu of confirming the notice, or in lieu of confirming it so far as it relates to that part of the land, as the case may be, direct that such permission shall be so granted in the event of an application being made in that behalf ;
- (c) if it appears to the Minister, having regard to the probable ultimate use of the land, that it is expedient so to do, he may, if he confirms the notice, modify it, either in relation to the whole or in relation to any part of the land to which it relates, by substituting any other local authority for the council on whom the notice is served, and in any such case the foregoing provisions of this subsection shall have effect accordingly. [2305]

(3) If within the period of six months from the date on which a purchase notice is served under this section the Minister has neither confirmed the notice nor taken any such other action as is mentioned in paragraph (a) or paragraph (b) of the last foregoing subsection, nor notified the owner by whom the notice was served that he does not propose to confirm the notice, the notice shall be deemed to be confirmed at the expiration of that period, and the council on whom the notice was served shall be deemed to be authorised to acquire the interest of the owner compulsorily in accordance with the provisions of Part IV of this Act, and to have served notice to treat in respect thereof at the expiration of the said period. [2306]

(4) The power conferred by subsection (2) of section five of the Acquisition of Land (Assessment of Compensation) Act, 1919, to withdraw a notice to treat shall not be exercisable in the case of a notice to treat which is deemed to have been served by virtue of this section. [2307]

(5) Before confirming a purchase notice, or taking any other action in lieu thereof, under this section, the Minister shall give notice of his proposed action—

- (a) to the person by whom the notice was served ;
- (b) to the council on whom the notice was served ;
- (c) to the local planning authority for the area in which the land is situated ; and
- (d) to any other local authority whom the Minister proposes, under the foregoing provisions of this section, to substitute for the said council ;

and if within the period prescribed by the notice under this subsection (not being less than twenty-eight days from the service thereof) any person or authority on whom that notice is served so requires, the Minister shall, before confirming the purchase notice or taking any such other action as aforesaid, afford to those persons and authorities an opportunity of appearing before and being heard by a person appointed by the Minister for the purpose.

[2308]

*Effect of section.*—Where permission to develop land has either been refused or granted subject to conditions and the owner is able to claim that the land is incapable of “reasonably beneficial use” in its existing state, he may require the district council or county borough council to purchase it. Alternatively, the Minister may direct planning permission to be granted.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Reasonably beneficial use.*—The Minister is to be the sole judge as to whether or not the conditions specified in sub-s. (1), *ante*, have been fulfilled including the claim that the land is incapable of “reasonably beneficial use” (see sub-s. (2), *ante*, and note on the words “If he is satisfied,” *infra*).

*Sub-s. (1), para. (c).*—Before making this claim, the owner will be wise to discuss the matter with the local planning authority and see what other development (if any) they would permit and what conditions (if any) they would impose on granting such permission. He should inspect the register of development consents to see if permission has been given for any other development to anyone else with respect to his land. As to the register of permissions, see s. 14 (5), *ante*.

*Regulations.*—See s. 111, *post*.

*Serve.*—As to service of notices, see s. 105, *post*.

*Purchase notice.*—The notice should contain recitals dealing with the conditions specified in sub-s. (1), *ante*. It may also be desirable to state facts in support of the claims either in the notice itself or in a document accompanying the notice, but authoritative guidance may be given in the regulations.

*Shall forthwith transmit a copy of the notice to the Minister.*—This important requirement should be noted by district councils and county borough councils.

*If he is satisfied.*—See note to s. 4, *ante*, on the words “If it appears to the Minister.” Of the cases there cited, see in particular *Robinson v. Minister of Town and Country Planning*, [1947] K. B. 702; [1947] 1 All E. R. 851, C. A., *post*.

*Confirm the notice.*—The effect of the Minister’s confirming the notice is that the council are deemed :—

1. To be authorised to acquire the owner’s interest in the land compulsorily ;
2. To have served a notice to treat on such date as the Minister may direct.

*Notice to treat.*—See the Lands Clauses Consolidation Act, 1845, s. 18 (2 Halsbury’s Statutes 1120, and 6 Halsbury’s Laws (2nd Edn.), 81 *et seq.*).

*Grant permission for the development.*—Such permission may be granted notwithstanding that the Minister has previously refused to grant permission with respect to the development in question (cf. sub-s. (1), *ante*). In appealing to the Minister against a refusal to grant permission or against conditions, one of the grounds of appeal might be that unless the appeal is allowed the land will be incapable of reasonably beneficial use.

*Acquisition of Land (Assessment of Compensation) Act, 1919, s. 5 (2).*—2 Halsbury’s Statutes 1179.

*An opportunity of being heard.*—This does not necessarily mean that the hearing will take the form of a public local inquiry, though in the past the Minister has given effect to these words by holding a local inquiry. As to local inquiries, see s. 104, *post*.

*Definitions.*—As to “develop” and “development,” see ss. 12, *ante*, and 119 (1), *post*. As to “local planning authority,” see ss. 4, *ante*, and 119 (1), *post*. For definitions of “land,” “owner,” “use” and “local authority,” see s. 119 (1), *post*.

**20. Compensation for refusal of permission in certain cases.**—(1) Where, on application made under this Part of this Act for permission to carry out development of any class specified in Part II of the Third Schedule to this Act permission for that development is refused by the Minister, either on appeal or on the reference of the application to him for determination, or is so granted by the Minister subject to conditions, then if, on a claim made to the local planning authority within the time and in the manner prescribed by regulations under this Act, it is shown that the value of the interest of any person in the land is less than it would have been if the permission had been granted, or had been granted unconditionally, as the case may be, the local planning authority shall pay to that person compensation (to be assessed in accordance with the provisions of the Fourth Schedule to this Act) equal to the difference. [2309]

(2) In determining for the purposes of the foregoing subsection whether and to what extent the value of any interest in land is less than it would have been if the permission had been granted or had been granted unconditionally, it shall be assumed that any subsequent application for the like permission would be determined in the same way :

Provided that if, on the refusal of permission for the development in respect of which the application is made, the Minister undertakes to grant permission for any other development of the land in the event of an application being made in that behalf, regard shall be had to that undertaking in determining the matters aforesaid. [2310]

(3) Where a purchase notice served under the last foregoing section in

respect of any interest in land does not take effect, or does not take effect in relation to any part of the land, by reason of any such direction as is mentioned in paragraph (b) of the proviso to subsection (2) of that section, then if it is shown, on a claim made to the local planning authority, within the time and in the manner prescribed by regulations under this Act that the permitted development value of that interest or, as the case may be, of that interest so far as it relates to that part of the land, is less than its compulsory purchase value, the local planning authority shall pay to the person entitled to that interest compensation (to be assessed in accordance with the provisions of the Fourth Schedule to this Act) equal to the difference. [2311]

(4) For the purposes of the last foregoing subsection the expression "permitted development value", in relation to an interest in land in respect of which any such direction as is mentioned in that subsection has been given, means the value of that interest calculated with regard to the direction and to any determination of the Central Land Board under subsection (4) of section seventy of this Act, but on the assumption that no permission would be granted under this Part of this Act otherwise than in accordance with the direction; and the expression "compulsory purchase value", in relation to any such interest, means the value of that interest as it would be assessed in accordance with the provisions of section fifty-one of this Act for the purpose of ascertaining the compensation payable on a purchase thereof in pursuance of the purchase notice. [2312]

(5) Where any such permission as is mentioned in subsection (1) of this section is granted by the Minister subject to conditions, or where any permission required to be granted by any such direction as is mentioned in subsection (3) of this section would be so granted subject to conditions, being in either case conditions for regulating the design or external appearance of buildings, or the size or height of buildings, or, in the case of permission to be granted in accordance with any such direction as aforesaid, for regulating the number of buildings to be erected on the land, then if it appears to the Minister that it is reasonable so to do having regard to the local circumstances, he may direct that those conditions shall be disregarded, either altogether, or to such extent as may be specified in the direction, in assessing the compensation (if any) payable under the said subsection (1) or under the said subsection (3), as the case may be. [2313]

(6) Except as provided by subsection (3) of this section, no compensation shall be payable under this section in respect of any interest in land in respect of which a purchase notice is served under section nineteen of this Act. [2314]

*Effect of section.*—Part II of Sched. III, *post*, specifies certain development which it would be unreasonable to refuse without payment of compensation. Sub-s. (1) of the present section, *ante*, makes provision for compensation if permission is refused by the Minister on appeal or on reference to him of the application. A claim for compensation can similarly be made under the subsection where the Minister grants permission for development specified in Part II of Sched. III subject to conditions.

If, on a refusal of permission in respect of development of the kind specified in Part II of Sched. III, the Minister undertakes to grant permission for any other development of the land in the event of an application being made in that behalf, regard must be had to that fact in determining the amount of compensation payable (sub-s. (2), proviso, *ante*).

The Acquisition of Land (Assessment of Compensation) Act, 1919 (2 Halsbury's Statutes 1176), applies to the determination of disputed questions of compensation under this section, except so far as may be otherwise provided by regulations (s. 110, *post*).

In certain circumstances a purchase notice under s. 19, *ante*, may not take effect. Provision for compensation is made by sub-s. (1) of the present section, such compensation to be assessed in accordance with Sched. IV, *post*. Reference should be made to s. 19 (2), *ante*, particularly para. (b) of the proviso.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Regulations.*—For the general provisions as to regulations, see s. 111, *post*.

*Compensation.*—Values will be ascertained under rule (2) of s. 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919 (2 Halsbury's Statutes 1178), which is applied with the necessary modifications by Sched. IV, *post*.

*Sub-s. 4.*—In ascertaining the permitted value, regard must be had to two factors:—

- (a) The development which would be permitted under a direction given in pursuance of s. 19 (2) (b), *ante*; and
- (b) The amount of the development charge (if any) fixed by the Central Land Board under s. 70, *post*, with respect to such development.

Under s. 51, *post*, the compulsory purchase value of the interest in land is to be assessed under the Acquisition of Land (Assessment of Compensation) Act, 1919 (2 Halsbury's Statutes 1178), as modified by the present Act, on the assumption that planning permission would be given for development of any class specified in Sched. III, *post*, but not for any other development.

*Definitions.*—As to "development," see ss. 12, *ante*, and 119 (1), *post*; and as to "local planning authority," see ss. 4, *ante*, and 119 (1), *post*. For "purchase notice," see ss. 19, *ante*, and 119 (1), *post*. For definitions of "land" and "building," see s. 119 (1), *post*.

**21. Revocation and modification of permission to develop.**—(1) Subject to the provisions of this section, if it appears to the local planning authority that it is expedient, having regard to the development plan and to any other material considerations, that any permission to develop land granted on an application made in that behalf under this Part of this Act should be revoked or modified, they may by order revoke or modify the permission to such extent as appears to them to be expedient as aforesaid:

Provided that no such order shall take effect unless it is confirmed by the Minister, and the Minister may confirm any order submitted to him for the purpose either without modification or subject to such modifications as he considers expedient. [2315]

(2) Where a local planning authority submit an order to the Minister for his confirmation under this section, that authority shall serve notice on the owner and on the occupier of the land affected, and on any other person who in their opinion will be affected by the order; and if within such period as may be prescribed in that behalf in the notice (not being less than twenty-eight days from the service thereof) any person on whom the notice is served so requires, the Minister shall, before confirming the order, afford to him, and to the local planning authority, an opportunity of appearing before and being heard by a person appointed by the Minister for the purpose. [2316]

(3) The power conferred by this section to revoke or modify permission to develop land may be exercised—

- (a) where the permission relates to the carrying out of building or other operations, at any time before those operations have been completed;
- (b) where the permission relates to a change of the use of any land, at any time before the change has taken place:

Provided that the revocation or modification of permission for the carrying out of building or other operations shall not affect so much of those operations as has been previously carried out. [2317]

*Effect of section.*—This section empowers local planning authorities by order to revoke or modify development permissions, subject to the necessity for such orders to be confirmed by the Minister following opportunities for both parties to be heard by a person appointed for the purpose.

Nevertheless, the powers of the section must be exercised before the works previously authorised have been completed or the change of use previously allowed has taken place. Protection is also given where part of the works has been completed. The next section provides for compensation for loss sustained through the exercise of these powers of revocation and modification.

*If it appears that it is expedient.*—See note to s. 4, *ante*, on the words "If it appears to the Minister."

*Any other material considerations.*—It would be a "material consideration," for example, if the local planning authority had submitted or prepared to submit amendments to the plan which if approved by the Minister would render the proposed development no longer in conformity with the plan.

*Granted . . . under this part of this Act.*—See ss. 12 and 14, *ante*. Note the provisions contained in ss. 77 and 78, *post*, under which permissions granted under the previous law are deemed to have been granted under this Part of this Act.

*By order revoke or modify.*—No special procedure is laid down for challenging a revocation order either before or after it has been confirmed by the Minister. The order could be challenged by prohibition or certiorari.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).



*Serve notice.*—As to service of notices, see s. 105, *post*.

*An opportunity of appearing before and being heard.*—See note to s. 15, *ante*.

*Definitions.*—As to “local planning authority,” see ss. 4, *ante*, and 119 (1), *post*; as to “development plan,” see ss. 5, *ante*, and 119 (1), *post*; and as to “develop,” see ss. 12, *ante*, and 119 (1), *post*. For definitions of “land,” “owner,” “building operations” and “use,” see s. 119 (1), *post*.

## **22. Supplementary provisions as to revocation and modification.—(1)**

Where permission to develop land is revoked or modified by an order made under the last foregoing section, then if, on a claim made to the local planning authority within the time and in the manner prescribed by regulations under this Act, it is shown that any person interested in the land has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification, or has otherwise sustained loss or damage which is directly attributable to the revocation or modification, that authority shall pay to that person compensation in respect of that expenditure, loss or damage:

Provided that unless either—

- (a) any sum has been paid under Part VII of this Act by way of development charge in respect of the development to which the permission relates; or
- (b) no such charge is payable in respect of that development by virtue of any of the provisions of Part VIII of this Act;

no compensation shall be payable under this subsection in respect of loss or damage consisting of the depreciation in value of any interest in the land by virtue of the revocation or modification. [2318]

(2) For the purposes of this section, any expenditure incurred in the preparation of plans for the purposes of any work or upon other similar matters preparatory thereto shall be deemed to be included in the expenditure incurred in carrying out that work, but except as aforesaid no compensation shall be paid under this section in respect of any work carried out before the grant of the permission which is revoked or modified, or in respect of any other loss or damage (not being loss or damage consisting of the depreciation in value of an interest in land) arising out of anything done or omitted to be done before the grant of that permission. [2319]

(3) Where permission for the development of land granted by a development order has been withdrawn, whether by the revocation or amendment of the order or by the issue of directions under powers in that behalf conferred by the order, then, if, on an application made in that behalf under this Part of this Act, permission for that development is refused or is granted subject to conditions other than those previously imposed by the development order, the foregoing provisions of this section shall apply, as if the permission granted by the development order had been granted by the local planning authority under this Part of this Act and had been revoked or modified by an order under the last foregoing section. [2320]

(4) The provisions of section nineteen of this Act shall apply in relation to an order made under the last foregoing section revoking permission to develop land or modifying any such permission by the imposition of conditions, as they apply in relation to the refusal of an application for such permission or the grant of such an application subject to conditions, and in any such case the said section nineteen shall have effect subject to the following modifications:—

- (a) in paragraph (b) of subsection (1), for the words “in a case where permission to develop the land was granted as aforesaid subject to conditions” there shall be substituted the words “in a case where the permission was modified by the imposition of conditions”; and



- (b) for paragraph (a) of the proviso to subsection (2) there shall be substituted the following paragraph :—

“(a) if it appears to the Minister to be expedient so to do he may, in lieu of confirming the purchase notice, cancel the order revoking the permission or, where the order modified the permission by the imposition of conditions, revoke or amend those conditions so far as appears to him to be required in order to enable the land to be rendered capable of reasonably beneficial use by the carrying out of the development in respect of which the permission was granted”. [2321]

(5) Where the permission which is revoked or modified by an order under the last foregoing section is permission of any such class as is mentioned in subsection (1) of section twenty of this Act, the provisions of that section shall apply as if for references therein to the refusal of the permission or the imposition of conditions on the grant thereof there were substituted references to the revocation of permission or the modification thereof by the imposition of conditions and subsection (1) of that section shall have effect as if for the words “if the permission had been granted or had been granted unconditionally” there were substituted the words “if the permission had not been revoked or had not been modified”. [2322]

(6) Where, by virtue of the foregoing provisions of this section, compensation is payable in respect of expenditure incurred in carrying out any work on land, then if a purchase notice is served under section nineteen of this Act in respect of any interest in that land, or a claim for compensation is made in respect of any such interest under subsection (1) of section twenty of this Act, any compensation payable in respect of the acquisition of that interest under the said section nineteen or as the case may be, any compensation payable in respect of that interest under the said section twenty, shall be reduced by an amount equal to the value of the works in respect of which compensation is payable under this section. [2323]

(7) Any compensation payable under this section in respect of loss or damage consisting of the depreciation in value of an interest in land shall be assessed in accordance with the provisions of the Fourth Schedule to this Act, and in calculating the amount of any such depreciation it shall be assumed that permission would be granted under this Part of this Act for development of the land of any class specified in the Third Schedule to this Act. [2324]

*General note.*—This section provides for compensation where a development permission granted under the previous section is revoked or modified.

First, it will be noted that the claim must be made to the local planning authority or to the delegate authority where delegation has been made under regulation 3 of the Town and Country Planning (Authorisation of Delegation) Regulations, 1947, S. R. & O., 1947, No. 2499, within the time and in the manner prescribed by the regulations.

Secondly, compensation falls under two heads :—

- (a) For expenditure in carrying out work which is rendered abortive by the revocation or modification; and
- (b) For loss or damage sustained which is directly attributable to the revocation or modification.

Dealing first with abortive expenditure, an example would be a case where the developer has commenced his operations and done actual work after the grant of permission and before it is revoked or modified. It may have been necessary for him to make a survey of the land and to prepare plans in connection with the work before carrying it out. By express provision the Act makes it clear that compensation may be claimed in respect of these preliminary matters even though the expense was incurred before permission was granted (sub-s. (2), *ante*).

The second head would cover the case where a developer had to expend money to get release from a contract entered into after (not before) the grant of permission.

No compensation will be payable in respect of loss or damage consisting of depreciation in the value of any interest in land by virtue of the revocation or modification unless either :—

- (a) A development charge in respect of the development revoked or modified has been paid; or
- (b) No development charge was payable in respect of the development.

Sub-s. (4) applies s. 19, subject to certain modifications. This enables the owner to serve a purchase notice where by reason of the order the land has become incapable of beneficial use.

• *Regulations.*—For the general provisions applicable to regulations, see s. 111, *post*.

*If it appears to the Minister.*—See note to s. 4, *ante*.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

S. 20.—Note the provisions of sub-s. (5), *ante*, which relates to permissions granted under s. 20 (1), *ante*, which have been revoked or modified under s. 21, *ante*. In such cases references to the refusal of the permission or the imposition of conditions on the grant thereof are to be read as the revocation of permission or the modification thereof by the imposition of conditions, and s. 20 (1) will have effect in modified form.

*Definitions.*—As to “development” and “develop,” see ss. 12, *ante*, and 119 (1), *post*; as to “local planning authority,” see ss. 4, *ante*, and 119 (1), *post*; and as to “purchase notice,” see ss. 19, *ante*, and 119 (1), *post*. For definitions of “land” and “use,” see s. 119 (1), *post*.

**23. Enforcement of planning control.**—(1) If it appears to the local planning authority that any development of land has been carried out after the appointed day without the grant of permission required in that behalf under this Part of this Act, or that any conditions subject to which such permission was granted in respect of any development have not been complied with, then, subject to any directions given by the Minister, the local planning authority may within four years of such development being carried out, if they consider it expedient so to do having regard to the provisions of the development plan and to any other material considerations, serve on the owner and occupier of the land a notice under this section. [2325]

(2) Any notice served under this section (hereinafter called an “enforcement notice”) shall specify the development which is alleged to have been carried out without the grant of such permission as aforesaid or, as the case may be, the matters in respect of which it is alleged that any such conditions as aforesaid have not been complied with, and may require such steps as may be specified in the notice to be taken within such period as may be so specified for restoring the land to its condition before the development took place, or for securing compliance with the conditions, as the case may be; and in particular any such notice may, for the purpose aforesaid, require the demolition or alteration of any buildings or works, the discontinuance of any use of land, or the carrying out on land of any building or other operations. [2326]

(3) Subject to the provisions of the next following subsection, an enforcement notice shall take effect at the expiration of such period (not being less than twenty-eight days after the service thereof) as may be specified therein :

Provided, that—

(a) if within the period aforesaid an application is made to the local planning authority under this Part of this Act for permission for the retention on the land of any buildings or works, or for the continuance of any use of the land, to which the enforcement notice relates, the notice shall be of no effect pending the final determination of that application, and if such permission as aforesaid is granted on that application, the notice shall not take effect;

(b) if within the period aforesaid an appeal is made to the court under the following provisions of this section by a person on whom the enforcement notice was served, the notice shall be of no effect pending the final determination or withdrawal of the appeal.

[2327]

(4) If any person on whom an enforcement notice is served under this section is aggrieved by the notice, he may, at any time within the period mentioned in the last foregoing subsection, appeal against the notice to a court of summary jurisdiction for the petty sessional division or place within which the land to which the notice relates is situated; and on any such appeal the court—

(a) if satisfied that permission was granted under this Part of this Act for the development to which the notice relates, or that no such permission was required in respect thereof, or, as the case may be,

that the conditions subject to which such permission was granted have been complied with, shall quash the notice to which the appeal relates ;

- (b) if not so satisfied, but satisfied that the requirements of the notice exceed what is necessary for restoring land to its condition before the development took place, or for securing compliance with the conditions, as the case may be, shall vary the notice accordingly ;
- (c) in any other case shall dismiss the appeal :

Provided that where the enforcement notice is varied or the appeal is dismissed, then, without prejudice to the provisions of paragraph (a) of the proviso to subsection (3) of this section, the court may, if they think fit, direct that the enforcement notice shall not come into force until such date (not being later than twenty-eight days from the determination of the appeal) as the court think fit. [2328]

(5) Any person aggrieved by a decision of a court of summary jurisdiction under the last foregoing subsection may appeal against that decision to a court of quarter sessions. [2329]

*Effect of section.*—This section provides the necessary machinery for enforcing planning control by dealing with development which contravenes the Act. This may be either by developing land without permission or by failing to observe development conditions imposed, and in such cases local planning authorities may (but are not bound to) serve "enforcement notices" on the owners and occupiers concerned. Any such notices must, however, be served within four years of the carrying out of the development against which they are directed.

Here two special provisions become applicable: first, an application may be made, usually within twenty-eight days of service, to the local planning authority to regularise the development by giving the necessary permission; and secondly, an appeal against the notice may be made within the like period to the local Magistrates' Court, subject to a further appeal to Quarter Sessions.

Enforcement procedure may be delegated under S. R. & O., 1947, No. 2499.

*Appointed day.*—This means such day as the Minister may by order appoint (s. 119 (1), *post*). July 1, 1948, has been so appointed (S.I. 1948 No. 213).

*Under this Part of this Act.*—Action may also be taken under this section in respect of contraventions of previous planning control; see s. 75, *post*. S. 75, *post*, enables enforcement procedure to be applied to contraventions of the 1932 Act which took place before the passing of the 1943 Act which had previously been protected against the prohibition procedure of s. 5 of the 1943 Act. Action in respect of previous contraventions must be taken within three years from the appointed day.

*Conditions.*—For power to grant permission subject to conditions, see s. 14, *ante*.

*Subject to any direction given by the Minister.*—These are important words. The Minister may direct a local planning authority not to exercise their powers under this section.

*And to any other material consideration.*—There may be something outside the development plan itself which may be material, e.g., directions from the Minister.

*Development plan.*—Note the provisions contained in s. 36, *post*.

*Serve notice.*—As to service of notices, see s. 105, *post*.

*Permission for retention.*—As to application for such permission, see s. 18, *ante*, and in the case of contraventions of previous planning control, see s. 75 (4), *post*. Where permission is granted to retain a contravention of previous control, see s. 75 (7), *post*, for relief from development charges.

*Appeal . . . to a court of summary jurisdiction.*—Procedure on appeal will be by way of complaint for an order under Rule 53 of the Summary Jurisdiction Rules, 1915.

*Definitions.*—As to "local planning authority," see ss. 4, *ante*, and 119 (1), *post*; as to "development," see ss. 12, *ante*, and 119 (1), *post*; and as to "development plan," see ss. 5, *ante*, and 119 (1), *post*. For definitions of "land," "owner," "buildings or works," "use" and "building operations," see s. 119 (1), *post*.

**24. Supplementary provisions as to enforcement.**—(1) If within the period specified in an enforcement notice, or within such extended period as the local planning authority may allow, any steps required by the notice to be taken (other than the discontinuance of any use of land) have not been taken, the local planning authority may enter on the land and take those steps, and may recover as a simple contract debt in any court of competent jurisdiction from the person who is then the owner of the land any expenses reasonably incurred by them in that behalf; and if that person, having been entitled to appeal to the court under the last foregoing section, failed to make such an appeal, he shall not be entitled in proceedings under this subsection to dispute the validity of the action taken by the local planning authority upon any ground which could have been raised by such an appeal. [2330]

(2) Any expenses incurred by the owner or occupier of any land for the purpose of complying with an enforcement notice served under the last foregoing section in respect of any development, and any sums paid by the owner of any land under the foregoing subsection in respect of the expenses of the local planning authority in taking steps required to be taken by such a notice, shall be deemed to be incurred or paid for the use and at the request of the person by whom the development was carried out. [2331]

(3) Where, by virtue of an enforcement notice, any use of land is required to be discontinued, or any conditions are required to be complied with in respect of any use of land or in respect of the carrying out of any operations thereon, then if any person, without the grant of permission in that behalf under this Part of this Act, uses the land or causes or permits the land to be used, or carries out or causes or permits to be carried out those operations, in contravention of the notice, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding fifty pounds; and if the use is continued after the conviction, he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding twenty pounds for every day on which the use is so continued. [2332]

(4) Nothing in this Part of this Act shall be construed as requiring permission to be obtained thereunder for the use of any land for the purpose for which it could lawfully have been used under this Part of this Act if the development in respect of which an enforcement notice is served under the last foregoing section had not been carried out. [2333]

(5) Provision may be made by regulations under this Act for applying in relation to steps required to be taken by an enforcement notice under the last foregoing section all or any of the following provisions of the Public Health Act, 1936, that is to say—

- (a) section two hundred and seventy-six (which empowers local authorities to sell materials removed in executing works under that Act, subject to accounting for the proceeds of sale);
- (b) section two hundred and eighty-nine (which confers power to require the occupier of any premises to permit works to be executed by the owner of the premises);
- (c) section two hundred and ninety-two (which confers power on local authorities to include a sum in respect of establishment charges in their expenses in executing works); and
- (d) section two hundred and ninety-four (which limits the liability of persons holding premises as agents or trustees in respect of the expenses recoverable under that Act);

subject to such adaptations and modifications as may be specified in the regulations, and any such regulations may provide for the charging on the land of any expenses recoverable by a local authority under this section.

[2334]

*Effect of section.*—The provisions of this section, which are a logical corollary to those of the preceding section, take the position a stage further. In the case of non-compliance with an enforcement notice, local planning authorities are authorised to enter on the land and themselves take the steps required by the notice, though this procedure does not apply where it is a change of use that is required.

Liability, as it were, runs with the land, for it is from the owner for the time being that local planning authorities can recover their expenses, but successors in title of the original developer can recover expenses from him.

Further, sub-s. (3) provides for enforcement notices to be enforced by criminal proceedings with default fines applicable to offences continuing after conviction.

*Owner.*—It is from the owner that these expenses are recoverable; but note the provision contained in sub-s. (2), *supra*.

*Reasonably incurred.*—These words are important. The Court would be able to decide whether or not the expenses have been reasonably incurred (*L.C.C. v. Harling Street*, [1935] 2 K. B. 322).

*For the use and at the request.*—This implies a type of the so-called constructive contract. Where a payment is made at the request of another and strictly for his use, a promise to repay the amount will be implied, even though the person at whose request the payment was made

has not thereby been relieved from any legal claim (see 7 Halsbury's Laws (2nd Edn.) 261 *et seq.*).

*Twenty pounds for every day.*—If a use is continued by a person after he has been convicted, the legal maximum of the default fine to which he becomes liable can soon become extremely heavy, though the maximum fine would no doubt only be imposed by the justices in the most flagrant cases. It is, perhaps, worthy of note in this connection that the maximum imprisonment that can be imposed by the Bench as an alternative to payment is limited to three months however high the amount of the fine under this section (Summary Jurisdiction Act, 1879, s. 5; 11 Halsbury's Statutes 324).

For recent examples of similar fines, see the Cotton (Centralised Buying) Act, 1947, s. 6 (2) (10 & 11 Geo. 6, c. 26) and regulation 58A (3) of the Defence (General) Regulations, 1939, S. R. & O., 1939, No. 927, as amended.

*Regulations.*—For the general provisions applicable to regulations under the Act, see s. 111, *post*.

*Public Health Act, 1936*, ss. 276, 289, 292 and 294.—29 Halsbury's Statutes 499, 509, 512, 513. The effect of these sections is shortly summarised in the text, *ante*, and s. 276 is reproduced in the notes to s. 26, *post*.

*Definitions.*—As to "enforcement notice," see s. 23 (2), *ante*; as to "local planning authority," see ss. 4, *ante*, and 119 (1), *post*; and as to "development," see ss. 12, *ante*, and 119 (1), *post*. For definitions of "use," "land," "owner" and "local authority," see s. 119 (1), *post*.

**25. Agreements regulating development or use of land.**—(1) A local planning authority may, with the approval of the Minister, enter into an agreement with any person interested in land in their area for the purpose of restricting or regulating the development or use of the land, either permanently or during such period as may be prescribed by the agreement, and any such agreement may contain such incidental and consequential provisions (including provisions of a financial character) as appear to the local planning authority to be necessary or expedient for the purposes of the agreement.

[2335]

(2) An agreement made under this section with any person interested in land may be enforced by the local planning authority against persons deriving title under that person in respect of that land as if the local planning authority were possessed of adjacent land and as if the agreement had been expressed to be made for the benefit of such land. [2336]

(3) Nothing in this section or in any agreement made thereunder shall be construed as restricting the exercise, in relation to land which is the subject of any such agreement, of any powers exercisable by any Minister or authority under this Act so long as those powers are exercised in accordance with the provisions of the development plan or in accordance with any directions which may have been given by the Minister under section thirty-six of this Act, or as requiring the exercise of any such powers otherwise than as aforesaid. [2337]

(4) The power of a local planning authority to make agreements under this section may be exercised also—

- (a) in relation to land in a county district, by the council of that district;
- (b) in relation to land in the area of a joint planning board, by the council of the county or county borough in which the land is situated.

and references in this section to a local planning authority shall be construed accordingly. [2338]

*General note.*—Under this section local authorities may enter into agreements with owners regulating the development or use of land and may enforce such agreements as if they were restrictive covenants. It continues the power given by s. 34 of the 1932 Act. For the provisions relating to the continuance of s. 34 agreements already made, see para. 10 of Sched. X, *post*.

Dealing with agreements under the said s. 34, the Lord Chancellor, at the Committee Stage of the Bill in the House of Lords on July 1, 1947, indicated the type of agreements contemplated by this section:—

"Therefore agreements which deal with many various sorts of things—for instance, with waiver of claims for compensation, for injurious affection in respect of certain lands on condition that no claims were made by the authorities for betterment in respect of development of other land; for granting gifts of land in consideration of permission to develop other land; for permitting public right of access to private lands in consideration of permission to develop other land; for granting permission to develop or redevelop land on condition that the value of the works was discounted in computing the consideration on a subsequent purchase of the property by the authority" (149 H. of L. Official Report 642).

Agreements under this section cannot permanently override the powers of the Act. Any agreement under this section which is a "prohibition of or restriction on the user or mode of user of land or buildings" should be registered in the register of local land charges; see s. 15 of the Land Charges Act, 1925, as amended by the Schedule to the Law of Property (Amendment) Act, 1926 (15 Halsbury's Statutes 538). See amendments of the substituted sub-s (7) of s. 15 of the said Act of 1925 contained in Part II of Sched. IX, *post*.

*The Minister*.—The Minister of Town and Country Planning (s. 1, *ante*).

*As appear to be necessary or expedient*.—See note to s. 4, *ante*, on the words "If it appears to the Minister."

*Enforced against persons deriving title*.—The effect of sub-s. (2) is to make the agreements referred to enforceable as if they were restrictive covenants the benefit and burden of which run with the land under the equitable doctrine of *Tulk v. Moxhay* (1848), 2 Ph. 774.

The subsection may be compared with other statutory provisions designed to make covenants run with the land; see the Town and Country Planning Act, 1932, s. 34 (2) (25 Halsbury's Statutes 506); the Town and Country Planning Act, 1944, s. 3 (4) (37 Halsbury's Statutes 428); the Water Act, 1945 s. 15 (2) (38 Halsbury's Statutes 507); and the Forestry Act, 1947 (10 & 11 Geo. 6, c. 21), s. 1 (2).

The essential elements necessary to the enforcement of restrictive covenants under the general law were stated by Farwell, J., in *Zetland v. Driver*, [1939] Ch. 1; [1938] 2 All E. R. 158, at p. 161.

As to restrictive covenants generally, see 29 Halsbury's Laws (2nd Edn.) 441, and Cheshire's Modern Law of Real Property (5th Edn.), pp. 301 *et seq*.

*Joint planning board*.—The provisions as to the establishment by the Minister of such joint boards are contained in s. 4 (2), *ante*.

*Definitions*.—As to "local planning authority," see ss. 4, *ante*, and 119 (1), *post*; as to "development," see ss. 12, *ante*, and 119 (1), *post*; and as to "development plan," see ss. 5, *ante*, and 119 (1), *post*. For definitions of "land," "use" and "Minister" (as in the phrase "any Minister"), see ss. 119 (1), *post*.

### *Additional powers of control*

**26. Powers relating to authorised uses.**—(1) Without prejudice to the provisions of this Part of this Act with respect to the service of enforcement notices, if it appears to a local planning authority that it is expedient in the interests of the proper planning of their area (including the interests of amenity), regard being had to the development plan and to any other material considerations—

- (a) that any use of land should be discontinued, or that any conditions should be imposed on the continuance thereof; or
- (b) that any building or works should be altered or removed.

they may by order require the discontinuance of that use, or impose such conditions as may be specified in the order on the continuance thereof, or require such steps as may be so specified to be taken for the alteration or removal of the buildings or works, as the case may be:

Provided that no such order shall take effect unless it is confirmed by the Minister, and the Minister may confirm any order submitted to him for the purpose either without modification or subject to such modifications as he considers expedient. [2339]

(2) Where a local planning authority submit an order to the Minister for his confirmation under this section, that authority shall serve notice on the owner and on the occupier of the land affected, and on any other person who in their opinion will be affected by the order; and if within the period specified in that behalf in the notice (not being less than twenty-eight days from the service thereof) any person on whom the notice is served so requires, the Minister shall, before confirming the order, afford to that person, and to the local planning authority, an opportunity of appearing before and being heard by a person appointed by the Minister for the purpose. [2340]

(3) Where an order under this section has been confirmed by the Minister, a copy of the order shall be served by the local planning authority on the owner and occupier of the land to which the order relates. [2341]

(4) Where, by virtue of an order made under this section, the use of any land for any purpose is required to be discontinued, or any conditions are imposed on the continuance thereof, then if any person, without the grant of permission in that behalf under this Part of this Act, uses the land for that purpose or, as the case may be, uses the land for that purpose in contravention of those conditions, or causes or permits the land to be so used, he shall be



guilty of an offence and liable on summary conviction to a fine not exceeding fifty pounds; and if the use is continued after conviction, he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding twenty pounds for every day on which the use is so continued. [2342]

(5) If within the period prescribed in that behalf by an order under this section any steps required by that order to be taken for the alteration or removal of any buildings or works have not been taken, the local planning authority may, and shall if so required by directions of the Minister, enter on the land and take those steps and section two hundred and seventy-six of the Public Health Act, 1936 (which empowers local authorities to sell materials removed in executing works under that Act, subject to accounting for the proceeds of sale) shall apply in relation to any works executed by a local planning authority under this section as it applies in relation to works executed by a local authority under that Act. [2343]

(6) An order under this section may grant permission for any development of the land to which the order relates subject to such conditions as may be specified in the order; and the provisions of this Part of this Act shall apply in relation to any permission so granted as they apply in relation to permission granted by the local planning authority on an application in that behalf made thereunder. [2344]

(7) Where the requirements of any order under this section will involve the displacement of persons residing in any premises, it shall be the duty of the local planning authority, in so far as there is not other residential accommodation suitable to the reasonable requirements of those persons available on reasonable terms, to secure the provision of such accommodation in advance of the displacement. [2345]

*General note.*—This section gives power to bring existing uses into line with the plan. Similar power was given in s. 13 of the 1932 Act; but there action was taken on the order of the local authority requiring the works to be brought into conformity with the scheme. The Minister did not come into the picture and the only appeal was to a court of summary jurisdiction on grounds similar to those permitted against enforcement notices under the present Act.

Sub-ss. (1) and (2), *ante*, may usefully be compared with s. 21 (1) and (2), *ante*, and sub-s. (4), *ante*, may be similarly compared with s. 24 (3), *ante*.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Serve notice.*—For the general provisions as to service of notices under the Act, see s. 105, *post*.

*Twenty pounds for every day.*—See note to s. 24, *ante*.

*Public Health Act, 1936, s. 276.*—29 Halsbury's Statutes 499. This section is as follows:—

"(1) A local authority may sell any materials which have been removed by them from any premises, including any street, when executing works under, or otherwise carrying into effect the provisions of, this Act, and which are not before the expiration of three days from the date of their removal claimed by the owner and taken away by him.

"(2) Where a local authority sell any materials under this section, they shall pay the proceeds to the person to whom the materials belonged after deducting the amount of any expenses recoverable by them from him.

"(3) This section does not apply to refuse removed by a local authority."

This section may also be applied under s. 24 (5), *ante*, in the circumstances of that section.

*Sub-s. 6.*—A permission granted under this subsection may forestall the service of a purchase notice under s. 19, *ante*, and force the owner to ask compensation for depreciation under s. 27, *post*.

*Definitions.*—As to "enforcement notices," see s. 23 (2), *ante*; as to "local planning authority," see ss. 4, *ante*, and 119 (1), *post*; as to "development plan," see ss. 5, *ante*, and 119 (1), *post*; and as to "development," see ss. 12, *ante*, and 119 (1), *post*. For definitions of "use," "land," "buildings or works," "owner" and "local authority," see s. 119 (1), *post*.

**27. Provisions supplementary to s. 26.**—(1) Where an order is made under the last foregoing section requiring any use of land to be discontinued, or imposing conditions on the continuance thereof, or requiring any buildings or works on land to be altered or removed, then if, on a claim made to the local planning authority within the time and in the manner prescribed by regulations under this Act, it is shown that any person has suffered damage in consequence of the order by the depreciation of any interest in the land to which he is entitled or by being disturbed in his enjoyment of the land, that authority shall pay to that person compensation in respect of that damage; and any compensation payable under this subsection in respect



of the depreciation in the value of an interest in the land shall be assessed in accordance with the provisions of the Fourth Schedule to this Act. [2346]

(2) Without prejudice to the foregoing provisions of this section and subject to the provisions of paragraph 4 of the Fourth Schedule to this Act, any person who carries out any works in compliance with an order under the last foregoing section shall be entitled, on a claim made as aforesaid, to recover from the local planning authority compensation in respect of any expenses reasonably incurred by him in that behalf. [2347]

(3) If any person entitled to an interest in land in respect of which an order is made under the last foregoing section claims that by reason of the order the land is incapable of reasonably beneficial use in its existing state and that it cannot be rendered capable of reasonably beneficial use by the carrying out of any development for which permission has been granted under this Part of this Act, whether by that order or otherwise, he may serve a purchase notice in respect of his interest in accordance with the provisions of subsection (1) of section nineteen of this Act; and in relation to a purchase notice so served the provisions of the said section nineteen shall apply as they apply in relation to a notice served under subsection (1) of that section, subject to the following modifications:—

(a) in subsection (2), for the words “the conditions specified in paragraphs (a) to (c) of the foregoing subsection” there shall be substituted the words “the conditions specified in subsection (3) of section twenty-seven of this Act”;

(b) for paragraph (a) of the proviso to the said subsection (2) there shall be substituted the following paragraph:—

“(a) if it appears to the Minister to be expedient so to do he may, in lieu of confirming the purchase notice, revoke the order under section twenty-six of this Act or, as the case may be amend that order so far as appears to him to be required in order to prevent the land from being rendered incapable of reasonably beneficial use by the order.” [2348]

(4) Where a purchase notice in respect of any interest in land is served under the said section nineteen in consequence of an order made in relation to the land under the last foregoing section, then if that interest is purchased in accordance with the said section nineteen, or if compensation is payable in respect thereof under subsection (3) of section twenty of this Act, no compensation shall be payable under this section in respect of that order. [2349]

(5) Except as provided by this section, no purchase notice shall be served under the said section nineteen in respect of an interest in land while the land is incapable of reasonably beneficial use by reason only of an order made under the last foregoing section. [2350]

*General note.*—Under this section compensation is payable for any depreciation in the “existing use” value caused by an order under s. 26, *ante*. The compensation will be the difference between the value of that use calculated under s. 51 for the purpose of compulsory purchase and whatever its value would be for whatever other use is permitted after the order is made. Compensation will also be payable for disturbance.

*Regulations.*—For the general provisions applicable to regulations under the Act, see s. 111, *post*.

*Depreciation.*—Note that by para. 1 of Sched. IV compensation under ss. 20, 22 and 27 is compensation in respect of depreciation. S. 20, *ante*, deals with the manner of calculating the depreciation.

*Sched. IV.*—Sched. IV applies the rules of s. 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919; but note that under s. 51, *post*, values for compulsory purchase must now be based on the assumption that permission to develop will only be granted in respect of development specified in Sched. III.

*Incapable of reasonably beneficial use.*—See s. 19, *ante*.

*Purchase notice.*—See s. 19, *ante*. For compensation payable when a purchase notice is not confirmed because of the grant of permission for other development, see s. 20 (3), *ante*.

*If it appears to the Minister.*—See note to s. 4, *ante*.

*Definitions.*—As to “local planning authority,” see ss. 4, *ante*, and 119 (1), *post*; and as to “development,” see ss. 12, *ante*, and 119 (1), *post*. For definitions of “use,” “land” and “buildings or works,” see s. 119 (1), *post*.

**28. Orders for preservation of trees and woodlands.**—(1) If it appears to a local planning authority that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area, they may for that purpose make an order (in this Act referred to as a “tree preservation order”) with respect to such trees, groups of trees or woodlands as may be specified in the order; and, in particular, provision may be made by any such order—

- (a) for prohibiting (subject to any exemptions for which provision may be made by the order) the cutting down, topping, lopping or wilful destruction of trees except with the consent of the local planning authority, and for enabling that authority to give their consent subject to conditions;
- (b) for securing the replanting, in such manner as may be prescribed by or under the order, of any part of a woodland area which is felled in the course of forestry operations permitted by or under the order;
- (c) for applying, in relation to any consent under the order, and to applications therefor, any of the provisions of this Part of this Act relating to permission to develop land, and to applications for such permission, subject to such adaptations and modifications as may be specified in the order;
- (d) for the payment by the local planning authority, subject to such exceptions and conditions as may be specified in the order, of compensation in respect of damage or expenditure caused or incurred in consequence of the refusal of any consent required under the order, or of the grant of any such consent subject to conditions.

[2351]

(2) A tree preservation order shall not be made in relation to any land in respect of which a Forestry Dedication Covenant is in force under the Forestry Act, 1947, or in respect of which advances have been made by the Forestry Commissioners under the Forestry Acts, 1919 to 1947. [2352]

(3) A tree preservation order shall not take effect until it is confirmed by the Minister, and the Minister may confirm any such order either without modification or subject to such modifications as he considers expedient. [2353]

(4) Provision may be made by regulations under this Act with respect to the form of tree preservation orders, and the procedure to be followed in connection with the submission and confirmation of such orders, and such regulations shall, in particular, make provision for securing—

- (a) that notice shall be given to the owners and occupiers of land affected by any such order of the submission to the Minister of the order;
- (b) that objections and representations with respect to the proposed order duly made in accordance with the regulations shall be considered before the order is confirmed by the Minister; and
- (c) that copies of the order when confirmed by the Minister shall be served on the owners and occupiers of the land to which it relates:

Provided that where it appears to the Minister that any such order should take effect immediately, he may confirm the order provisionally without complying with the requirements of any such regulations with respect to the consideration of objections and representations, but any order so confirmed shall cease to have effect upon the expiration of two months from the date on which it is so confirmed unless within that period it has again been confirmed, with or without modifications, after compliance with those requirements. [2354]

(5) Without prejudice to any other exemption for which provision may be made by a tree preservation order, no such order shall apply to the cutting

down, topping or lopping of trees which are dying or dead or have become dangerous or the cutting down, topping or lopping of any trees in compliance with any obligation imposed by or under any Act of Parliament or so far as may be necessary for the prevention or abatement of a nuisance. [2355]

(6) If any person contravenes the provisions of a tree preservation order, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding fifty pounds; and if in the case of a continuing offence the contravention is continued after the conviction, he shall be guilty of a further offence and liable on summary conviction to an additional fine not exceeding forty shillings for every day on which the contravention is so continued. [2356]

*General note.*—This section amplifies existing planning provisions for securing the preservation on amenity grounds of trees and woodlands, and brings them within the framework of the present Act.

S. 46 of the Town and Country Planning Act, 1932 (25 Halsbury's Statutes 512), made provision for the preservation of trees by allowing protective provisions to be inserted in town planning schemes, including requirements as to the replanting of felled areas.

Later, the Town and Country Planning (Interim Development) Act, 1943, s. 8 (36 Halsbury's Statutes 248), made fairly elaborate provision for the making of "interim preservation orders" and it is these orders which, under the amended provisions of the present section, give place to the new "tree preservation orders." Provision may be made for payment of compensation by the local planning authorities, but, subject to this, the question of compensation is left to be settled by the orders in the light of the particular circumstances in which they are made.

Note that as from July 1, 1948, the whole of the 1932 and 1943 Acts, referred to above, are repealed (ss. 113, 120 and Sched. IX, Part II, *post*).

The Explanatory Memorandum on the Bill (Cmd. 7006) stated of the present section, at p. 14: "This provision will not be used to prevent the felling of trees required for timber."

Presumably any order made under the present section should be registered as a local land charge (see note to s. 26, *ante*).

*If it appears to a local planning authority . . . where it appears to the Minister.*—See note to s. 4, *ante*, on the phrase "If it appears to the Minister."

*Forestry dedication covenants.*—By s. 1 (1) of the Forestry Act, 1947 (10 & 11 Geo. 6, c. 21), the expression "forestry dedication covenant" means "a covenant entered into with the Forestry Commissioners . . . to the effect that land shall not, except with the previous consent in writing of the Commissioners or, in case of dispute, under direction of the Minister of Agriculture and Fisheries, be used otherwise than for the growing of timber (within the meaning of section three of the Forestry Act, 1919) in accordance with the rules or practice of good forestry or for purposes connected therewith, being a covenant not containing any expression of intention contrary to the application of section seventy-nine of the Law of Property Act, 1925 (which provides that, unless a contrary intention is expressed, a covenant relating to any land of a covenantor or capable of being bound by him shall be deemed to be made by the covenantor on behalf of himself or his successors in title and the persons deriving title under him or them)."

For the Forestry Act, 1919, s. 3, see 3 Halsbury's Statutes 444, and for the Law of Property Act, 1925, s. 79, see 15 Halsbury's Statutes 257.

*Forestry Act, 1947.*—10 & 11 Geo. 6, c. 21.

*Advances have been made.*—By the Forestry Act, 1919, s. 3 (3) (d) (3 Halsbury's Statutes 445), as amended by the Forestry Act, 1945, s. 10 and Sched. II (38 Halsbury's Statutes 22, 24) the Forestry Commissioners are empowered to make advances by way of grant or by way of loan to persons in respect of the afforestation (including the replanting) of land belonging to those persons. In exercising this power the Commissioners are to comply with any directions given to them by the appropriate Minister (see s. 2 of the Act of 1945; 38 Halsbury's Statutes 17).

*Forestry Acts, 1919 to 1947.*—These Acts are the Forestry Act, 1919 (3 Halsbury's Statutes 443); the Forestry (Transfer of Woods) Act, 1923 (3 Halsbury's Statutes 459); the Forestry Act, 1927 (3 Halsbury's Statutes 464); the Forestry Act, 1945 (38 Halsbury's Statutes 16); and the Forestry Act, 1947, *supra*.

*Forestry Commissioners.*—The Forestry Commissioners were originally appointed under the Forestry Act, 1919, s. 1 (3 Halsbury's Statutes 443), but since the passing of the Forestry Act, 1945 (38 Halsbury's Statutes 16), which provided for the reconstitution of the Forestry Commission, they have been appointed under s. 1 of that Act (38 Halsbury's Statutes 17). They are appointed by His Majesty to the maximum number of ten, including a chairman. At least three of their number are to have special knowledge and experience of forestry and at least one is to have scientific attainments and a technical knowledge of forestry.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Regulations under this Act.*—For the general provisions applicable thereto, see s. 111, *post*.

*Obligation imposed by or under any Act.*—Examples of obligations imposed by Act of Parliament in relation to the lopping of trees arise under (a) the Highway Act, 1835, s. 65 (9 Halsbury's Statutes 81), whereby justices of the peace are empowered to summon owners of land adjoining carriageways or cartways to show cause why obstructing hedges or trees are not lopped, whereupon orders may be made for the owners to carry out the necessary work; and (b) the Public Health Act, 1923, s. 25 (13 Halsbury's Statutes 1123), under which local

authorities may serve notices requiring the lopping or cutting of trees, hedges or shrubs overhanging streets or footpaths.

*Prevention or abatement of a nuisance.*—Boughs and branches of trees overhanging another person's land so as to be a nuisance may be cut off by the owner or occupier of such land without notice to the owner of the trees. Roots of trees growing under a neighbour's land and undermining his wall may also constitute a nuisance (see 1 Halsbury's Laws (2nd Edn.) 432, and the cases there cited; see also 24 Halsbury's Laws (2nd Edn.) 49 *et seq.*).

*In the case of a continuing offence.*—See note to s. 24, *ante*, headed "Twenty pounds for every day."

*Definitions.*—As to "local planning authority," see ss. 4, *ante*, and 119 (1), *post*; and as to "develop," see ss. 12, *ante*, and 119 (1), *post*. For definitions of "land" and "owner," see s. 119 (1), *post*.

**29. Orders for preservation of buildings of special architectural or historic interest.**—(1) If it appears to a local planning authority that it is expedient to make provision for the preservation of any building of special architectural or historic interest in their area, they may for that purpose make an order (in this Act referred to as a "building preservation order") restricting the demolition, alteration or extension of the building:

Provided that no such order shall be made in relation to a building being—

- (a) an ecclesiastical building which is for the time being used for ecclesiastical purposes;
- (b) a building which is the subject of a scheme or order under the enactments for the time being in force with respect to ancient monuments; or
- (c) a building for the time being included in a list of monuments published by the Minister of Works under any such enactment as aforesaid;

and no such order shall be made so as to affect the powers of the Minister of Works under any such enactment as aforesaid. [2357]

(2) Provision may be made by a building preservation order—

- (a) for requiring the consent of the local planning authority to be obtained for the execution of works of any description specified in the order, and for applying, in relation to such consent and to applications therefor, any of the provisions of this Part of this Act relating to permission to develop land, and to applications for such permission, subject to such adaptations and modifications as may be specified in the order;
- (b) for enabling that authority, where any such works have been executed in contravention of the order, to require the restoration of the building to its former state, and for that purpose for applying any of the provisions of this Part of this Act with respect to enforcement notices, subject to such adaptations and modifications as may be specified in the order;
- (c) for the payment by that authority, subject to such exceptions and conditions as may be specified in the order, of compensation in respect of damage or expenditure caused or incurred in consequence of the refusal of any consent required under the order, or the grant of any such consent subject to conditions. [2358]

(3) A building preservation order shall not take effect until it is confirmed by the Minister, and the Minister may confirm any such order either without modification or subject to such modifications as he considers expedient:

Provided that no such order shall be made by the local planning authority, or confirmed by the Minister, unless he or they is or are satisfied that the execution of the works specified in the order would seriously affect the character of the building. [2359]

(4) Provision may be made by regulations under this Act with respect to the form of building preservation orders and the procedure to be followed in connection with the submission and confirmation of such orders, and such regulations shall, in particular, make provision for securing—

- (a) that notice shall be given to the owner and any occupier of the building affected by any such order of the submission to the Minister of the order ;
- (b) that objections and representations with respect to the proposed order duly made in accordance with the regulations shall be considered before the order is confirmed by the Minister ; and
- (c) that a copy of the order when confirmed by the Minister shall be served on the owner and any occupier of the building to which it relates :

Provided that where it appears to the Minister that any such order should take effect immediately, he may confirm the order provisionally without complying with the requirements of any such regulations with respect to the consideration of objections and representations, but any order so confirmed shall cease to have effect upon the expiration of two months from the date on which it is so confirmed unless within that period it has again been confirmed, with or without modifications, after compliance with those requirements. [2360]

(5) Without prejudice to any provisions included in the building preservation order by virtue of paragraph (b) of subsection (2) of this section, if any person, being the owner of a building in relation to which a building preservation order is in force or a person upon whom notice of such an order has been served by the authority by whom the order was made, executes or causes or permits to be executed any works in contravention of the order, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding one hundred pounds. [2361]

(6) Nothing in this section or in any order made thereunder shall render unlawful the execution of any works which are urgently necessary in the interests of safety or health or for the preservation of the building or of neighbouring property, so long as notice in writing of the proposed execution of the works is given as soon as may be after the necessity for the works arises to the authority by whom the order was made. [2362]

(7) Works specified by the Minister as being required for properly maintaining a building in relation to which a building preservation order is in force and which is settled land within the meaning of the Settled Land Act, 1925, shall be added to the classes of works specified in Part II of the Third Schedule to that Act (which specifies improvements in or towards payment of which capital money may be applied, without any scheme being first submitted to the trustees of the settlement or the court, subject to provisions under which repayment of capital money applied may be required to be made out of income). [2363]

(8) The powers conferred on a local planning authority by this section to make a building preservation order may be exercised also by the council of the county district in which the building to which the order relates is situated ; and references in this Act to local planning authorities shall, in relation to the said powers, be construed as including references to the council of a county district. [2364]

*General note.*—This section replaces s. 17 of the 1932 Act (25 Halsbury's Statutes 490), and s. 43 of the 1944 Act (37 Halsbury's Statutes 467), both of which are repealed by the present Act as from the appointed day (ss. 113, 120 and Sched. IX, Part II, *post*).

The " building preservation orders " for which provision is made by the present section have much in common with the tree preservation orders which are the subject of the preceding section, *ante*. Building preservation orders, which are to be made where it is desired to preserve buildings of special architectural or historic interest, will restrict the demolition, alteration or extension of the buildings, but a certain amount of latitude is allowed in that work which is urgently necessary in the interests of safety or health or for the preservation of the building or of neighbouring property may be carried out on written notice being given, and in other cases the Minister must be satisfied before confirming an order that the works in question would seriously affect the character of the building. Or perhaps one should say that a little latitude is " retained " since a similar provision appeared in the 1944 Act (Town and Country Planning Act, 1944, s. 43 (5), proviso ; 37 Halsbury's Statutes 468), though sub-s. (6) of the present section which confers the right did not appear in the Bill as originally

presented, but was added by Ministerial Amendment at the Committee Stage in the House of Commons (H. of C. Official Report, S.C.D., March 12, 1947, col. 405).

As to the registration of any order as a local land charge, see note to s. 26, *ante*. See particularly s. 15 (7) (b) of the Land Charges Act, 1925 (as amended by the Schedule to the Law of Property (Amendment) Act, 1926 (printed, as amended, at 15 Halsbury's Statutes 539), and Part II of Sched. IX, *post*.

*If it appears expedient.*—See note to s. 4, *ante*, on the words "If it appears to the Minister."

*Enactments . . . with respect to ancient monuments.*—The principal Acts in this connection are the Ancient Monuments Consolidation and Amendment Act, 1913, and the Ancient Monuments Act, 1931 (12 Halsbury's Statutes 392 *et seq.*; 24 Halsbury's Statutes 296).

S. 22 of the former defines the phrase "ancient monument," and refers to the Schedule to the Ancient Monuments Protection Act, 1882 (12 Halsbury's Statutes 378), which listed the places ordered to be regarded as ancient monuments up to the time of passing of that Act. The whole of the Act of 1882 except such Schedule was repealed by the Act of 1913.

Special provision for ancient monuments is made *passim* by a number of Statutes, among them the Acquisition of Land (Authorisation Procedure) Act, 1946, ss. 1 (2) (c), 8 (1), and Sched. I, Part III, para. 12 (39 Halsbury's Statutes 55, 61, 65).

*List of monuments published.*—S. 12 of the Ancient Monuments Consolidation and Amendment Act, 1913 (12 Halsbury's Statutes 397), as amended and extended by s. 7 of the Ancient Monuments Act, 1931 (24 Halsbury's Statutes 301), empowers the Minister (formerly the Commissioners) of Works to prepare and publish from time to time lists of ancient monuments.

*Minister of Works.*—The Minister of Works now exercises the functions of the old Commissioners of Works under the Crown Lands Act, 1851 (3 Halsbury's Statutes 280), and the Commissioners of Works Act, 1852 (3 Halsbury's Statutes 293). By the Minister of Works and Planning Act, 1942 (35 Halsbury's Statutes 55), provision was made for the appointment of a Minister of Works and Planning, who, being duly appointed by the Crown thereunder, was later renamed the Minister of Works on the transfer of his town planning functions to the Minister of Town and Country Planning (Minister of Town and Country Planning Act, 1943; 36 Halsbury's Statutes 39).

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Regulations.*—For the general provisions as to regulations under the Act, see s. 111, *post*.

*Service of notices.*—See, generally, s. 105, *post*.

*Fine not exceeding one hundred pounds.*—Note that under sub-s. (5), *ante*, there is no provision for default fines as under ss. 24 (3), 26 (4) and 28 (6), *ante*, and 32 (3), *post*, for the simple reason that the offence under the present subsection is not a continuing one; if subsequent proceedings were taken in respect of the same act of executing or causing or permitting the execution of works, the plea of *autrefois convict* or *autrefois acquit* could be successfully maintained.

*Settled Land Act, 1925.*—17 Halsbury's Statutes 833. For Sched. III, Part II, to that Act, see 17 Halsbury's Statutes 969. The effect of sub-s. (7), *ante*, is to make maintenance works required by the Minister in respect of settled land authorised improvements, the capital cost of which the trustees of the settlement or the Court may require to be replaced by instalments out of income.

*Definitions.*—As to "local planning authority," see ss. 4, *ante*, and 119 (1), *post*; as to "develop," see ss. 12, *ante*, and 119 (1), *post*; and as to "enforcement notices," see s. 23 (2), *ante*. For definitions of "building," "enactment," "land" and "owner," see s. 119 (1), *post*.

**30. Lists of buildings of special architectural or historic interest.**—(1) With a view to the guidance of local planning authorities in the performance of their functions under this Act in relation to buildings of special architectural or historic interest, the Minister shall compile lists of such buildings, or approve, either with or without modifications, such lists compiled by other persons or bodies of persons, and may amend any list so compiled or approved. **[2365]**

(2) As soon as may be after any list has been compiled or approved under this section, or any amendments of such a list have been made, a copy of so much of the list as relates to any county borough or county district, or of so much of the amendments as relate thereto, as the case may be, certified by or on behalf of the Minister to be a true copy thereof, shall be deposited with the clerk of the council of that borough or district and also, where that council is not the local planning authority, with the clerk of the local planning authority. **[2366]**

(3) Any such copy as aforesaid shall be registered in the register of local land charges, in such manner as may be prescribed by rules made for the purposes of this section under subsection (6) of section fifteen of the Land Charges Act, 1925, by the proper officer of the council of the county borough or county district. **[2367]**

(4) As soon as may be after the inclusion of any building in a list under this section, whether on the compilation or approval of the list or by the amendment thereof, or as soon as may be after any such list has been amended



by the exclusion of any building therefrom, the Minister shall serve a notice on every owner and occupier of the building stating that the building has been included in, or excluded from, the list, as the case may be. [2368]

(5) Before compiling or approving, either with or without modifications, any list under this section, or amending any list thereunder, the Minister shall consult with such persons or bodies of persons as appear to him appropriate as having special knowledge of or interest in buildings of architectural and historic interest. [2369]

(6) So long as any building (not being a building to which an order under the last foregoing section applies or a building of any description specified in the proviso to subsection (1) of that section) is included in any list compiled or approved under this section, no person shall execute, or cause or permit to be executed, any works for the demolition of the building or for its alteration or extension in any manner which would seriously affect its character, unless at least two months before the works are executed notice in writing of the proposed works has been given to the local planning authority :

Provided that nothing in this subsection shall render unlawful the execution of any such works as aforesaid which are urgently necessary in the interests of safety or health, or for the preservation of the building or of neighbouring property, so long as notice is given as aforesaid as soon as may be after the necessity for the works arises. [2370]

(7) Where a local planning authority receive notice of any proposed works under the last foregoing subsection, they shall as soon as may be send a copy of the notice to the Minister and, except where the authority is the council of a county borough, to the council of the county district in which the building to which the notice relates is situated, and in either case to such other persons or bodies of persons as may be specified by directions of the Minister either generally or as respects the building in question. [2371]

(8) If any works are carried out in contravention of the provisions of subsection (6) of this section, the local planning authority may serve on the owner and occupier of the building a notice requiring such steps for restoring the building to its former state as may be specified in the notice to be taken within such period as may be so specified ; and in relation to any notice served under this subsection, the provisions of subsections (3) to (5) of section twenty-three of this Act and of section twenty-four of this Act shall, subject to such exceptions and modifications as may be prescribed by regulations under this Act, apply as those provisions apply in relation to an enforcement notice served under the said section twenty-three. [2372]

(9) Without prejudice to the provisions of the last foregoing subsection, if any person contravenes the provisions of subsection (6) of this section, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one hundred pounds. [2373]

*General note.*—This section, which is supplementary to the preceding section, re-enacts s. 42 of the 1944 Act (37 Halsbury's Statutes 437) ; but whereas that section was permissive the present section is mandatory.

Sub-ss. (3) and (6)–(9), *supra*, are new.

Sub-s. (3) is necessary to ensure registration as the section would not otherwise come within s. 15 of the Land Charges Act, 1925, as amended (15 Halsbury's Statutes 538).

Sub-ss. (6), (7) and (9) are designed to restrain action until the local planning authority have had an opportunity of taking action under s. 29, *ante*.

Sub-s. (8) enables the authority to take enforcement proceedings where works have already been carried out.

As to the publication of existing lists, see 445 H. of C. Official Report 1497 *et seq*.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Land Charges Act, 1925*, s. 15 (6).—15 Halsbury's Statutes 539.

*Serving a notice.*—As to service of notices, see s. 105, *post*.

*Cause or permit.*—These words were considered in *Goodbarne v. Buck*, [1940] K. B. 771 ; [1940] 1 All E. R. 613, C.A.

*Ss. 23 (3)–(5) and 24.*—See *ante*. These sections allow, *inter alia*, appeal to Magistrates' Courts with a further appeal to Quarter Sessions.

*Regulations.*—For the general provisions applicable to regulations under the Act, see s. 111, *post*.

*Fine not exceeding one hundred pounds.*—See note to s. 29, *ante*. The same considerations



as there set forth apply to sub-s. (9), *ante*, in which these words occur. Note, however, that s. 24 (3), *ante*, the provisions of which are applied by the present section, includes provision for a default fine for continuing offences, but it seems likely that this will be one of the provisions to be excepted or modified by regulations issued under sub-s. (8), *ante*.

*Definitions*.—As to “local planning authority,” see ss. 4, *ante*, and 119 (1), *post*; and as to “enforcement notice,” see s. 23 (2), *ante*. For definitions of “functions,” “building” and “owner,” see s. 119 (1), *post*.

**31. Control of advertisements.**—(1) Subject to the provisions of this section, provision shall be made by regulations under this Act for restricting or regulating the display of advertisements so far as appears to the Minister to be expedient in the interests of amenity or public safety, and without prejudice to the generality of the foregoing provision, any such regulations may provide—

- (a) for regulating the dimensions, appearance and position of advertisements which may be displayed, the sites on which such advertisements may be displayed, and the manner in which they are to be affixed to land ;
- (b) for requiring the consent of the local planning authority to be obtained for the display of advertisements, or of advertisements of any class specified in the regulations ;
- (c) for applying, in relation to any such consent and to applications therefor, any of the provisions of this Part of this Act relating to permission to develop land and to applications for such permission, subject to such adaptations and modifications as may be specified in the regulations ;
- (d) for enabling the local planning authority to require the removal of any advertisement which is being displayed in contravention of the regulations, or the discontinuance of the use for the display of advertisements of any site which is being used for that purpose in contravention of the regulations, and for that purpose for applying any of the provisions of this Part of this Act with respect to enforcement notices, subject to such adaptations and modifications as may be specified in the regulations ;
- (e) for the constitution, for the purposes of the regulations, of such advisory committees as may be prescribed by the regulations, and for determining the manner in which the expenses of any such committee are to be defrayed. [2374]

(2) Without prejudice to the generality of the powers conferred by paragraph (c) of the foregoing subsection, regulations made for the purposes of this section may provide that any appeal from the decision of the local planning authority on an application for their consent under the regulations shall lie to an independent tribunal constituted in accordance with the regulations instead of to the Minister. [2375]

(3) Regulations made for the purposes of this section may make different provision with respect to different areas, and in particular may make special provision with respect to areas defined for the purposes of the regulations as areas of special control (being either rural areas or areas other than rural areas which appear to the Minister to require special protection on grounds of amenity) ; and without prejudice to the generality of the foregoing provision may prohibit the display in any such area of all advertisements except advertisements of such classes (if any) as may be specified in the regulations. [2376]

(4) Areas of special control for the purposes of regulations under this section may be defined either by reference to provisions included in that behalf in development plans or by means of orders made or approved by the Minister in accordance with the provisions of the regulations :

Provided that where the Minister is authorised by the regulations to make or approve any such order as aforesaid, the regulations shall provide for the

publication of notice of the proposed order in such manner as may be prescribed by the regulations, for the consideration of objections duly made thereto, and for the holding of such inquiries or other hearings as may be so prescribed, before the order is made or approved. [2377]

(5) Subject as hereinafter provided, regulations made under this section may be made so as to apply to advertisements which are being displayed on the date on which the regulations come into force, or to the use for the display of advertisements of any site which was being used for that purpose on that date :

Provided that any such regulations shall provide for exempting therefrom—

- (a) the continued display of any such advertisement as aforesaid ; and
- (b) the continued use for the display of advertisements of any such site as aforesaid,

during such period as may be prescribed in that behalf by the regulations, and different periods may be so prescribed for the purposes of different provisions of the regulations. [2378]

*General note.*—This section needs careful consideration. It is not a mere re-enactment of s. 47 of the 1932 Act (25 Halsbury's Statutes 513), but recasts the old law.

The control of advertisements, a term comprehensively defined in s. 119 (1), *post*, is brought within the development control provisions of the Act. This means that *Mills and Rockleys, Ltd. v. Leicester City Council*, [1946] K. B. 315 ; [1946] 1 All E. R. 424, no longer applies. Under the regulations which will be made under this section existing or future displays of advertisements may be prohibited. S. 61 (3) affects the calculation of the restricted value under the development value provisions of the Act and ss. 47 (7) and 19 (1) of the 1932 Act must be taken into account in calculating the unrestricted value. This must, however, be considered in the light of the interpretation given to s. 47 in *Mills and Rockleys, Ltd. v. Leicester City Council, supra*. Contrast also the five years' grace permitted under s. 47 (6) (iv) of the 1932 Act (25 Halsbury's Statutes 514) with whatever period is permitted by the regulations. Also note that prohibitory action under s. 47 of the 1932 Act could only be taken when amenity was *seriously* injured.

As to the previous control of advertisements outside the provisions of town and country planning law, see the Advertisements Regulation Acts, 1907 and 1925 (13 Halsbury's Statutes 908, 1113), both of which are repealed as from the appointed day (ss. 113, 120 and Sched. IX, Part II, *post*).

*Regulations.*—See s. 111, *post*.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Interests of amenity.*—Under s. 47 of the 1932 Act action would be taken when the advertisement seriously injured the amenity. This might have ruled out action when the amenity had already been destroyed by existing advertisements. It is intended that regulations shall assist the reclamation of areas where the amenity has been destroyed (H. of C. Official Report, S.C.D., March 12, 1947, col. 407).

*Application for . . . permission.*—See s. 14, *ante*. Note also the power of the Minister under s. 15, *ante*, to require any application to be referred to him.

*Enforcement notices.*—See ss. 23 and 24, *ante*.

*Independent tribunal.*—When the Bill was considered in Committee the Minister stated that it was his intention, if he could get agreement on the part of the advertising industry and the local authorities, to set up an independent tribunal under a legal chairman probably in each planning division. If no agreement could be obtained he proposed that appeal should lie to the Minister (H. of C. Official Report, S.C.D., March 13, 1947, cols. 437-438).

If the Minister requires any application to be referred to himself, there will be no appeal, see s. 15 (3), *ante*. As to a hearing in such a case, see s. 15 (2), *ante*.

*Areas of special control.*—In his speech on the Second Reading of the Bill on January 29, 1947, the Minister said : "One of the most important features of the control would be the almost complete prohibition of outdoor advertising in certain specified areas . . . most rural areas will probably be protected in this way (432 H. of C. Official Report 966).

The Minister then went on to describe the probable exemptions "even in areas of total exclusion," listing them as "certain types of advertisements essential to the life of the community, for example, those which announce forthcoming events or shop signs indicating a man's calling, or perhaps even posters (432 H. of C. Official Report 966). Later, at the Committee Stage, the Minister said that the exceptions would be the subject of discussion with the advertising interests. He then suggested that the exemptions would include election posters, auction sales, recruiting and war savings advertisements, village dances and fetes, meetings of women's institutes and similar meetings (H. of C. Official Report, S.C.D., March 13, 1947, col. 423).

Some further guidance may be obtained from the repealed provisions of s. 47 (6) of the 1932 Act (25 Halsbury's Statutes 514).

*Development plans.*—See ss. 5 to 11, *ante*.

*Such period as may be prescribed.*—Dealing with this matter in Committee, the Minister stated :—

“ It certainly is the intention in the Regulations to give a reasonable period of grace. I can say that in no case will there be, in respect of lawful advertisements properly put up, less than a year ” (H. of C. Official Report, S.C.D., March 13, 1947, col. 448).

*Definitions.*—As to “ local planning authority,” see ss. 4, *ante*, and 119 (1), *post*; and as to “ develop,” see ss. 12, *ante*, and 119 (1), *post*. For definitions of “ advertisements,” “ land ” and “ use,” see s. 119 (1), *post*.

**32. Provisions supplementary to s. 31.**—(1) Where the display of advertisements in accordance with regulations made under the last foregoing section involves the development of land within the meaning of this Act, planning permission for that development shall be deemed to be granted by virtue of this section, and no application shall be necessary in that behalf under the foregoing provisions of this Part of this Act. [2379]

(2) Where for the purpose of complying with any such regulations as aforesaid works are carried out by any person for the removal of advertisements being displayed on the date on which the regulations come into force or the discontinuance of the use for the display of advertisements of any site used for that purpose on that date, that person shall be entitled, on a claim made to the local planning authority within the time and in the manner prescribed by regulations under this Act, to recover from that authority compensation in respect of any expenses reasonably incurred by him in that behalf :

Provided that no compensation shall be payable under this subsection in respect of the removal of any advertisement which was not being displayed on the seventh day of January, nineteen hundred and forty-seven. [2380]

(3) Without prejudice to any provisions included in regulations made under the last foregoing section by virtue of paragraph (d) of subsection (1) of that section, if any person displays an advertisement in contravention of the provisions of the regulations, he shall be guilty of an offence and liable on summary conviction to a fine of such amount as may be prescribed by the regulations, not exceeding fifty pounds and in the case of a continuing offence, forty shillings for each day during which the offence continues after conviction. [2381]

(4) For the purposes of the last foregoing subsection and without prejudice to the generality thereof, a person shall be deemed to display an advertisement if—

- (a) the advertisement is displayed on land of which he is the owner or occupier ; or
- (b) the advertisement gives publicity to his goods, trade, business or other concerns :

Provided that a person shall not be guilty of an offence under the said subsection by reason only that an advertisement is displayed on land of which he is the owner or occupier, or that his goods, trade, business or other concerns are given publicity by the advertisement, if he proves that it was displayed without his knowledge or consent. [2382]

*General note.*—The purposes of this supplementary section are, first, to avoid duplication of applications for permission : one application is to cover consent under the regulations and consent for the purpose of development control ; secondly, to provide for the expenses of removing any prohibited display ; and thirdly, to make any contravention of the regulations an offence.

*Regulations.*—For the general provisions as to regulations under the Act, see s. 111, *post*.  
*Not being displayed on January 7, 1947.*—That is to say, when the provisions of the Bill became known.

*Forty shillings for each day.*—See note to s. 24, *ante*, on the phrase “ Twenty pounds for every day.”

*The owner.*—For definition, see s. 119 (1), *post*. See also s. 106, *post*, for power to require information as to ownership.

*Not be guilty . . . if he proves.*—Note that in the case of proceedings under sub-s. (3), *supra*, the burden of proving lack of knowledge or consent is upon the accused. Where is it desired to set up this defence, the appropriate plea is, of course, one of not guilty. In recent years clauses of a similar character have been inserted in a great number of statutes, e.g.,

where the facts are patent but it would be a matter of great difficulty to prove the knowledge or consent of the accused. A frequent example concerns the liability of directors and other officers of corporations which are charged with statutory offences; see, for instance, the Electricity Act, 1947, s. 62 (2), title *ELECTRICITY SUPPLY, ante*.

*Definitions.*—As to “development” and “planning permission” see ss. 12, *ante*, and 119 (1), *post*; and as to “local planning authority,” see ss. 4, *ante*, and 119 (1), *post*. For definitions of “advertisement,” “land,” and “use,” see s. 119 (1), *post*.

**33. Power to require proper maintenance of waste land, etc.**—(1) If it appears to a local planning authority that the amenity of any part of the area of that authority, or of any adjoining area, is seriously injured by the condition of any garden, vacant site or other open land in their area, then, subject to any directions given by the Minister, the authority may serve on the owner and occupier of the land, in the manner prescribed by regulations under this Act, a notice requiring such steps for abating the injury as may be specified in the notice to be taken within such period as may be so specified. [2383]

(2) In relation to any notice served under this section, the provisions of subsections (3) to (5) of section twenty-three of this Act, and of section twenty-four of this Act shall, subject to such exceptions and modifications as may be prescribed by regulations under this Act, apply as those provisions apply in relation to an enforcement notice served under the said section twenty-three. [2384]

*General note.*—This section reproduces a power which has usually been conferred by statutory planning schemes made under the 1932 Act (25 Halsbury's Statutes 470). Compare sub-s. (2), *supra*, with s. 30 (8), *ante*.

*If it appears.*—See note to s. 4, *ante*, on the words “If it appears to the Minister.”

*Amenity.*—The word “amenity” is obviously used very loosely; it appears to mean “pleasant circumstances, features, advantages” (*Re Ellis and Ruislip-Northwood U.D.C.*, [1920] 1 K. B. 343, *per* SCRUTTON, L.J.).

*Seriously injured.*—To justify action under this section it is not enough that the amenity should be injured, it must be *seriously* injured. The Explanatory Memorandum on the Bill (Cmd. 7006) refers, at p. 15, to “action where waste land has become an eyesore.”

*Other open land.*—It is thought that this does not mean that the land must necessarily be open to the public; in this context it suggests land which is open to the view of the public.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Serve.*—As to service of notices, see s. 105, *post*.

*Owner.*—For definition, see s. 119 (1), *post*. For power to require information as to ownership of land, see s. 106, *post*.

*Regulations.*—See s. 111, *post*.

*Definitions.*—As to “local planning authority,” see ss. 4, *ante*, and 119 (1), *post*. The meaning of “land” as used in the present section appears to be restricted by the context, in which case the definition in s. 119 (1), *post*, would apply only in a modified form.

### Supplemental

**34. Delegation of functions to councils of county districts, etc.**—(1) The Minister may, after consultation with such local authorities or associations of local authorities as he considers appropriate, make regulations for authorising or requiring local planning authorities to delegate to the councils of county districts in their areas, with or without restrictions, any of their functions under this Part of this Act, and such regulations may be made so as to apply generally to all local planning authorities (other than the councils of county boroughs) or to such of those authorities as may be specified in the regulations. [2385]

(2) In relation to a local planning authority being a joint planning board, the foregoing provisions of this section shall have effect as if the reference therein to the councils of county districts in their area included a reference to the councils of counties and county boroughs therein. [2386]

(3) Any regulations made for the purposes of this section may make provision—

(a) for requiring any council to whom functions are delegated in accordance with the regulations to perform those functions on behalf of the local planning authority;

- (b) for transferring to any such council any liability of the local planning authority to pay compensation under this Part of this Act in respect of anything done by that council in the exercise of functions delegated to them in accordance with the regulations ;
- (c) for the transfer and compensation of any officers of a local planning authority or of any such council as aforesaid. [2387]

*Regulations.*—As to regulations generally, see s. 111, *post*. Under the present section the Minister, on November 21, 1947, made the Town and Country Planning (Authorisation of Delegation) Regulations, 1947 (S. R. & O., 1947, No. 2499), allowing local planning authorities (other than county borough councils), by agreements with the consent of the Minister, to delegate to county district councils any of their functions under Part III of the Act, subject to the detailed provisions of the regulations. See also Town and Country Planning Circular No. 37/47.

In the last-named Circular the Minister expressed the view that county councils should retain sufficient control to ensure that the making of the development plan was not prejudiced, while making full use of the local knowledge of the district councils.

For special provisions relating to London, see s. 114, *post*.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*As he considers appropriate.*—See note to s. 4, *ante*, on the words "If it appears to the Minister."

*Requiring.*—The common law rule is that delegated powers may be resumed at any time, and an authority who have delegated powers to another authority can exercise those powers without first expressly revoking the delegation (*Huth v. Clarke* (1890), 25 Q. B. D. 391; *Richardson v. Abertillery U.D.C.* (1928), 92 J. P. 59).

The application of this rule can, however, be excluded by provision in the regulations.

*Requiring any council.*—It seems that the local planning authority might be compelled by regulations to delegate functions to certain councils and the latter compelled to accept the delegated powers and exercise them on behalf of the local planning authority.

*Definitions.*—As to "local planning authorities," see ss. 4, *ante*, and 119 (1), *post*; and as to "joint planning board," see s. 4 (2), *ante*. For definitions of "local authority" and "functions," see s. 119 (1), *post*.

**35. Application to local authorities and statutory undertakers.**—(1) Where the authorisation of a government department is required by virtue of any enactment in respect of development to be carried out by any local authority or by any statutory undertakers not being a local authority, that department may, upon granting that authorisation, direct that permission for that development shall be deemed to be granted under this Part of this Act, subject to such conditions, if any, as may be specified in the directions ; and the provisions of this Part of this Act shall apply in relation to any permission deemed to be granted by virtue of such directions as if it had been granted by the Minister on an application referred to him under section fifteen of this Act. [2388]

(2) Without prejudice to the provisions of the foregoing subsection, the provisions set out in the Fifth Schedule to this Act (being provisions re-enacting with additions and modifications sections thirty-five and thirty-six of the Act of 1944) shall have effect for the purposes of the application of this Part of this Act to land of statutory undertakers being operational land as defined by this Act, and to the development of such land by such undertakers :

Provided that the provisions of the said Schedule shall not apply in relation to the display of advertisements on operational land. [2389]

(3) In relation to land of local planning authorities, and to the development by local authorities of land in respect of which they are the local planning authority, the provisions of this Part of this Act (including, in the case of a local planning authority who carry on a statutory undertaking, the last foregoing subsection and the Fifth Schedule to this Act) shall have effect subject to such exceptions and modifications as may be prescribed by regulations made under this Act, and in particular such regulations may (subject to the provisions of subsection (1) of this section) provide for securing—

- (a) that any application by such an authority for permission to develop such land, or for any other consent required in relation to such land under this Part of this Act, shall be made to the Minister instead of to the local planning authority ;

- (b) that any notice or order authorised to be served or made under this Part of this Act in relation to such land shall be served or made by the Minister instead of by that authority. [2390]

(4) For the purposes of this section and of the Fifth Schedule to this Act development by a local authority or by statutory undertakers shall be deemed to be authorised by a government department if—

- (a) any consent, authority or approval to or for the development is granted by the department in pursuance of any enactment;
- (b) a compulsory purchase order is confirmed by the department authorising the purchase of land for the purpose of the development;
- (c) consent is granted by the department to the appropriation of land for the purpose of the development or the acquisition of land by agreement for that purpose;
- (d) authority is given by the department for the borrowing of money for the purpose of the development, or for the application for that purpose of any money not otherwise so applicable; or
- (e) any undertaking is given by the department to pay a grant in respect of the development in accordance with any enactment authorising the payment of such grants,

and references in this section and in the said Fifth Schedule to the authorisation of a government department shall be construed accordingly. [2391]

(5) The references in subsection (3) of this section to local planning authorities shall be construed as including references to any council to whom functions of a local planning authority are delegated in pursuance of regulations made under the last foregoing section. [2392]

*General note.*—Under sub-s. (1) of this section, where the authorisation of a government department (as such authorisation is defined in sub-s. (4)) is required for any development by a statutory undertaking, that authorisation may direct that planning permission shall be deemed to have been granted.

No doubt, before any authorisation is given under this section, there will be consultations on at least departmental level between the department concerned and the Ministry of Town and Country Planning (see H. of C. Official Report, S.C.D., March 13, 1947, col. 495). At the same time the provision could cause much detriment to good planning. Together with the exemption granted to Crown land by s. 87, *post*, it leaves a substantial gap in the planning code.

Where such authorisation is not granted, the jurisdiction of the Minister in respect of any matters arising on the development of operational land under this Part of the Act will be shared with the Minister appropriate to the particular undertaking; and the joint decisions of the Ministers can be subject to the procedure set out in the Statutory Orders (Special Procedure) Act, 1945 (38 Halsbury's Statutes 439). This applies also to any orders as to revocation or discontinuance.

When development is carried out by a local authority which is also the planning authority, initial application will be made to the Minister. When the development relates to operational land of a statutory undertaking carried on by the authority, the provisions of the section relating to statutory undertakings will also apply.

*Authorisation of a government department.*—See sub-s. (4), *supra*.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

S. 15.—See *ante*. This section gives power to the Minister to direct that any application shall be referred to the Minister for determination instead of being considered by the local planning authority. There is no appeal against the decision of the Minister when an application is referred under this section.

Ss. 35 and 36 of the Act of 1944.—37 Halsbury's Statutes 463, 464. These sections related to applications for and revocation of interim development permission, and, being replaced by Sched. V, *post*, are repealed as from July 1, 1948 (ss. 113, 120 and Sched. IX, Part II, *post*).

*Display of advertisements.*—See ss. 31 and 32, *ante*, and the provision as to the construction of this phrase contained in s. 119 (1), *post*.

*Regulations.*—For the general provisions applicable to regulations under the Act, see s. 111, *post*.

*Service of notices.*—For the general conditions applicable, see s. 105, *post*.

*Consent, authority or approval . . . is granted.*—E.g. where the Minister of Health authorises fire authorities to purchase land compulsorily under s. 3 (5) of the Fire Services Act, 1947 (see title FIRE PROTECTION, *ante*).

*Compulsory purchase order is confirmed.*—E.g. under s. 161 of the Local Government Act, 1933 (26 Halsbury's Statutes 394).

*Acquisition of land by agreement.*—E.g. under s. 158 of the Local Government Act, 1933 (26 Halsbury's Statutes 392).

*Sub-s. (5).*—As to delegation, see s. 34, *ante*, and the notes thereto.



*Definitions.*—As to “local planning authority,” see ss. 4, *ante*, and 119 (1), *post*; and as to “development” and “develop,” see ss. 12, *ante*, and 119 (1), *post*. For definitions of “government department,” “enactment,” “local authority,” “statutory undertakers,” “land,” “operational land” and “functions,” see s. 119 (1), *post*.

**36. Temporary provisions pending approval of plans.**—Where, under the foregoing provisions of this Part of this Act, a local planning authority are required to have regard to the provisions of the development plan in relation to the exercise of any of their functions, then, in relation to the exercise of those functions during any period before such a plan has become operative with respect to the area of that authority, that authority shall have regard to any directions which may be given to them by the Minister as to the provisions to be included in such a plan, and subject to any such directions shall have regard to the provisions which in their opinion will be required to be so included for securing the proper planning of the said area. [2393]

*Effect of section.*—This section has the effect of imposing a form of interim development control until the development plan has become operative. All the powers of Part III of the Act will be exercised having regard to the provisions which it is intended to include in the plan, whether under direction from the Minister or generally for the purpose of planning.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Definitions.*—As to “local planning authority,” see ss. 4, *ante*, and 119 (1), *post*; as to “development plan,” see ss. 5, *ante*, and 119 (1), *post*. For definition of “functions,” see s. 119 (1), *post*.

## PART IV

### ACQUISITION OF LAND, ETC.

#### *Acquisition and disposal of land for planning purposes*

**37. Compulsory acquisition of land by Ministers, local authorities and statutory undertakers.**—(1) Where any land is designated by a development plan under this Act as subject to compulsory acquisition by any Minister, local authority or statutory undertakers, that Minister or authority or those undertakers may be authorised to acquire that land compulsorily in accordance with the provisions of this section. [2394]

(2) If, during the period before a development plan has become operative under this Act with respect to any area—

- (a) the Minister and the Minister of Works are satisfied that the acquisition of any land in that area is necessary for the public service or otherwise for the purposes of any of the functions of the Minister of Works; or
- (b) the Minister and the Postmaster-General are satisfied that the acquisition of any such land is necessary for the purposes of the Post Office,

the Minister of Works or the Postmaster-General, as the case may be, may be authorised to purchase that land compulsorily in accordance with the provisions of this section. [2395]

(3) The compulsory acquisition of land under this section may be authorised—

- (a) in the case of land designated by a development plan as subject to acquisition by a Minister, by that Minister;
- (b) in the case of land so designated as subject to acquisition by a local authority, by the Minister concerned with the functions in question;
- (c) in the case of land so designated as subject to acquisition by any statutory undertakers, by the Minister who is the appropriate Minister for the purposes of those undertakers;
- (d) in the case of any such land as is mentioned in subsection (2) of this section, by the Minister of Works or the Postmaster-General, as the case may be. [2396]



(4) The Acquisition of Land (Authorisation Procedure) Act, 1946, shall apply to the compulsory acquisition of land under this section, and accordingly shall have effect—

- (a) as if this section had been in force immediately before the commencement of that Act ;
- (b) as if any reference in that Act to a local authority (except the references thereto in subsection (2) of section one and in paragraph 9 of the First Schedule) included a reference to statutory undertakers ; and
- (c) as if references therein to the Minister of Transport and to the enactments specified in paragraph (b) of subsection (1) of section one of that Act included respectively references to any Minister and to the provisions of this section. [2397]

(5) Any expenses incurred by the Minister of Transport in the acquisition of land under this section for the purpose of the construction or improvement of a road shall be defrayed out of the road fund. [2398]

*General note.*—Designation may be for either of two purposes. It may be for some statutory purpose where the power to acquire derives from some other enactment or it may be for planning purposes, in which case the power to acquire is derived from the present Act. This section is concerned with the first case—acquisitions authorised under other enactments.

If the land is designated, then the subsequent acquisition will be by means of a compulsory purchase order submitted by the acquiring Minister, authority, or undertaker, to whatever Minister would be the appropriate confirming authority under the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Halsbury's Statutes 52), and the enactment from which the power to acquire is derived. It would appear that the procedure for speedy acquisition under s. 2 of the 1946 Act is available for acquisitions under this section, though it is expressly excluded from cases under ss. 38 and 41, *post*.

On any order under the present section the confirming authority may disregard any objection which is in effect an objection to the development plan (see s. 45 (1), *post*).

Sub-s. (2), *ante*, came into force on August 6, 1947 ; as to the date of commencement of the rest of the section, see s. 120, *post*.

*Designated as subject to compulsory acquisition.*—As to designation, see ss. 5 and 9, *ante*.

*Functions of the Minister of Works.*—See note to s. 29, *ante*.

*Purposes of the Post Office.*—See 13 Halsbury's Statutes 3 *et seq.* ; 24 Halsbury's Statutes 325 *et seq.* ; 28 Halsbury's Statutes 181 *et seq.* ; 30 Halsbury's Statutes 691 ; 32 Halsbury's Statutes 537 ; 33 Halsbury's Statutes 351 ; 35 Halsbury's Statutes 151 ; and 39 Halsbury's Statutes 638.

*Acquisition of Land (Authorisation Procedure) Act, 1946.*—39 Halsbury's Statutes 52. For s. 1 (1) (2) and Sched. I, para. 9, see 39 Halsbury's Statutes 55, 64.

The date of commencement of that Act was April 18, 1946.

*Definitions.*—As to "development plan," see ss. 5 to 11, *ante*, and 119 (1), *post*. For definitions of "land," "Minister" (as in "any Minister"), "local authority," "statutory undertakers," "functions" and "appropriate Minister," see s. 119 (1), *post*.

**38. Compulsory acquisition of land for development.**—(1) Where any land is designated by a development plan under this Act as subject to compulsory acquisition by the appropriate local authority, then if the Minister is satisfied—

- (a) in the case of land comprised in an area defined by the plan as an area of comprehensive development, or of land contiguous or adjacent to any such area, that the land is required in order to secure the development or redevelopment of the said area or that it is expedient in the public interest that the land should be held together with land so required ;
- (b) in any other case, that it is necessary that the land should be acquired under this section for the purpose of securing its use in the manner proposed by the plan,

he may authorise the council of the county borough or county district in which the land is situated, to acquire the land compulsorily in accordance with the provisions of this section. [2399]

(2) If during the period before a development plan has become operative

under this Act with respect to any area, the Minister is satisfied that the acquisition of any land under this section is expedient—

- (a) for any purpose which appears to him to be immediately necessary in the interests of the proper planning of that area (not being a purpose for which a local authority could be authorised to acquire the land compulsorily under any other enactment);
- (b) for any other purpose for which, by virtue of paragraph (c) or (d) of subsection (1) of section ten of the Act of 1944, a local planning authority could be authorised to acquire land before the appointed day,

he may authorise the council of the county borough or county district in which the land is situated to acquire the land compulsorily in accordance with the provisions of this section. [2400]

(3) Where, under the foregoing provisions of this section, the Minister has power to authorise the council of a county borough or county district to acquire any land compulsorily, he may, if after consultation with that council and, in the case of land in a county, with the council of that county, he thinks it expedient so to do, authorise the land to be so acquired by any other local authority instead of by that council. [2401]

(4) The Acquisition of Land (Authorisation Procedure) Act, 1946, shall apply to the compulsory acquisition of land under this section and accordingly shall have effect as if this section had been in force immediately before the commencement of that Act :

Provided that section two of the said Act (which confers temporary powers for the speedy acquisition of land in urgent cases) shall not apply to the compulsory acquisition of land under this section. [2402]

*Effect of section.*—This section deals with acquisitions under designations for planning purposes. It is to be noted that the acquiring authority will be the council for the area. While the planning authority is the county council the council for the area will be the development authority. Note that the provisions of s. 45 (1) apply to objections to any compulsory purchase order made, after designation, under this section. Sub-s. (2) which came into operation on the passing of the Act is similar to s. 10 of the 1944 Act (37 Halsbury's Statutes 435). Its purpose is to enable acquisition to take place where necessary before the plan comes into operation. As to the disposal or appropriation of land acquired under this section, see s. 44 and Sched. XI, *post*.

*Designated as subject to compulsory acquisition.*—See ss. 5 and 9, *ante*.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Contiguous or adjacent.*—See note to s. 5, *ante*, on this phrase.

*Comprehensive development.*—See s. 5 (3), *ante*.

*Use in the manner proposed by the plan.*—This provision is important to ensure that development will not be obstructed by owners who, once they have received payment for the loss of development, will have lost much of the incentive which formerly would have tempted them to dispose of land for development.

See also s. 43, *post*, for powers of the Central Land Board in the same regard. As to mineral development, see s. 81 (4), *post*. Note also s. 44, *post*, which incorporates certain provisions of the 1944 Act. S. 22 of the 1944 Act (see Sched. XI, *post*) authorises the avoidance of any easement, servitude or restrictive covenant, subject to the payment of compensation for injurious affection under the Lands Clauses Consolidation Act, 1845 (2 Halsbury's Statutes 1113), by the local authority or any person deriving title under the local authority.

*Interests of proper planning.*—These words may govern the succeeding parenthesis. Many enactments under which local authorities may acquire land are limited as to the time ahead of their requirements for which they may acquire. The interests of proper planning may enable them to avoid this limitation.

*The Act of 1944, s. 10 (1) (c) or (d).*—The Town and Country Planning Act, 1944, s. 10 (1) (c) or (d) (37 Halsbury's Statutes 435, 436).

*Appointed day.*—See ss. 119 (1) and 120, *post*. July 1, 1948, is the day in question (S.I. 1948 No. 213).

*Other local authority.*—A case in which this provision may be necessary is to provide for "overspill" from areas of comprehensive development.

*Acquisition of Land (Authorisation Procedure) Act, 1946.*—39 Halsbury's Statutes 52. For s. 2 of that Act, see 39 Halsbury's Statutes 56. The date of commencement of the Act was April 18, 1946.

*Definitions.*—As to "development plan," see ss. 5, *ante*, and 119 (1), *post*; as to "development," see ss. 12, *ante*, and 119 (1), *post*; and as to "local planning authority," see ss. 4, *ante*, and 119 (1), *post*. For definitions of "land," "local authority," "use" and "enactment," see s. 119 (1), *post*.

**39. Power to expedite completion of purchase under s. 38.**—(1) If the Minister is satisfied, in the case of a compulsory purchase order submitted to him under the last foregoing section by a local authority, that it is urgently necessary in the public interest to empower that authority to enter on the whole or any part of the land to which the order relates and secure its vesting in them before the expiration of the time which would be required for the service of notices to treat, he may include in the order as confirmed by him a direction that the provisions of the Sixth Schedule to the Act of 1944 shall apply to the order so far as it relates to that land :

Provided that no such direction shall be so included in a compulsory purchase order unless application in that behalf is included in the order as submitted to the Minister. [2403]

(2) A compulsory purchase order which contains any such direction as aforesaid shall be registered in the register of local land charges, in such manner as may be prescribed by rules made for the purposes of this section under subsection (6) of section fifteen of the Land Charges Act, 1925, by the proper officer of the council of each county borough or county district in which the land to which the direction relates or any part thereof is situated ; and it shall be the duty of the local authority, as soon as may be after the order has become operative, to notify that fact to the proper officer of the authority by whom it is required to be registered as aforesaid, and to furnish him with all information relating to the order which is required for the purpose. [2404]

(3) Where a compulsory purchase order containing any such direction as aforesaid is made in respect of any interest in land which has sustained war damage, then if any of that damage has not been made good at the date on which notice to treat is deemed to have been served, the local authority shall when they notify the fact that the order has become operative to the proper officer under the last foregoing subsection, notify the War Damage Commission of that action having been taken. [2405]

(4) Any reference in the Sixth Schedule to the Act of 1944 to a purchase order providing for expedited completion, or to the purchasing authority, shall be construed as a reference to a compulsory purchase order containing any such direction as aforesaid, and to the local authority authorised to acquire land by that order, as the case may be. [2406]

(5) Paragraph 3 of the Second Schedule to the Acquisition of Land (Authorisation Procedure) Act, 1946 (which provides for entry on land before the purchase money has been paid, notwithstanding the provisions of sections eighty-four to ninety of the Lands Clauses Consolidation Act, 1845) and paragraph 4 of that Schedule (which makes special provision, in substitution for section ninety-two of the said Lands Clauses Consolidation Act, 1845, with respect to the sale of parts of houses and other premises) shall not apply to a compulsory purchase order containing any such direction as aforesaid. [2407]

*General note.*—This section makes the expedited completion provisions of Sched. VI to the 1944 Act (see Sched. XI, *post*) applicable to purchases for planning purposes. This procedure is permanent, whereas the speedy procedure of the Acquisition of Land (Authorisation Procedure) Act, 1946, s. 2 (39 Halsbury's Statutes 56), will expire on April 18, 1951.

*Conveyancing costs.*—An opinion of counsel has been obtained and accepted by the Law Society that vendors' costs under Sched. II to the Solicitors' Remuneration Order, 1882, as amended, are applicable in cases of compulsory acquisition by local authorities with expedited completion (see the Law Society's Gazette, February, 1948, at p. 36).

*Service of notices to treat.*—Note the provisions of s. 119 (3), *post*, as to constructive service of such notices.

*Provisions of the Sixth Schedule.*—Sched. VI to the 1944 Act (37 Halsbury's Statutes 490) provides for purchases proceeding as if notices to treat had been served as soon as the order confirming the compulsory purchase has been registered in the local land charges register, and provides further for transferring ownership soon afterwards notwithstanding that the compensation may not have been paid or even ascertained (see Sched. XI, *post*).

*Land Charges Act, 1925, s. 15 (6).*—15 Halsbury's Statutes 539.

*Sub-s. (3).*—This provision is to ensure that the War Damage Commission are aware that s. 14 of the War Damage Act, 1943 (36 Halsbury's Statutes 353), and s. 53 of the present Act.

*post*, affect the land. As to what is "war damage," see the War Damage Act, 1943, s. 2 (36 Halsbury's Statutes 338), and s. 119 (1), *post*. As to the War Damage Commission, see s. 3 of the Act of 1943 (36 Halsbury's Statutes 339).

*Acquisition of Land (Authorisation Procedure) Act*, 1946.—39 Halsbury's Statutes 52. For Sched. II, paras. 3 and 4, thereto, see 39 Halsbury's Statutes 67.

*Lands Clauses Consolidation Act*, 1845, ss. 84-90 and 92.—See Halsbury's Statutes 1142 *et seq.*, 1145.

*Definitions*.—For definitions of "local authority" and "land," see s. 119 (1), *post*.

**40. Acquisition of land by agreement for development.**—(1) The council of any county, county borough or county district may, with the consent of the Minister, acquire by agreement any land (whether or not being land designated by a development plan as subject to compulsory acquisition) which they require for any purpose for which a local authority may be authorised to acquire land compulsorily under section thirty-eight of this Act. [2408]

(2) The Lands Clauses Acts (except the provisions relating to the purchase of land otherwise than by agreement and the provisions relating to access to the special Act, and except sections one hundred and twenty-seven to one hundred and thirty-two of the Lands Clauses Consolidation Act, 1845) shall be incorporated with this section, and in construing those Acts as so incorporated this section shall be deemed to be the special Act and references to the promoters of the undertaking shall be construed as references to the council authorised to acquire the land under this section. [2409]

*Effect of section*.—This section gives similar powers to acquire by agreement for planning purposes any lands which could have been acquired compulsorily under s. 38, *ante*.

*The Minister*.—The Minister of Town and Country Planning (s. 1, *ante*).

*Designated as subject to compulsory acquisition*.—See ss. 5 and 9, *ante*.

*Lands Clauses Acts*.—See 2 Halsbury's Statutes 1113 *et seq.*

*Lands Clauses Consolidation Act*, 1845, ss. 127-132.—2 Halsbury's Statutes 1158 *et seq.*

*Definitions*.—As to "development plan," see ss. 5, *ante*, and 119 (1), *post*. For definitions of "land" and "local authority," see s. 119 (1), *post*.

**41. Power to acquire buildings of special architectural or historic interest.**

—(1) Where a building preservation order is in force as respects any building and it appears to the Minister that reasonable steps are not being taken for properly preserving the building, the Minister may authorise the council of the county or county borough or county district in which the building is situated to acquire compulsorily under this section the building and any land comprising or contiguous or adjacent to it which appears to the Minister to be required for preserving the building or its amenities, or for affording access thereto, or for the proper control or management thereof. [2410]

(2) Where a building preservation order is in force as respects any building and it appears to the Minister of Works that reasonable steps are not being taken for properly preserving the building, that Minister may be authorised under this section to acquire compulsorily the building and any land comprising or contiguous or adjacent to it which appears to him to be required as mentioned in the foregoing subsection. [2411]

(3) The Acquisition of Land (Authorisation Procedure) Act, 1946, shall apply to the compulsory acquisition of land under this section, and accordingly shall have effect—

(a) as if this section had been in force immediately before the commencement of that Act;

(b) as if references therein to the Minister of Transport and to the enactments specified in paragraph (b) of subsection (1) of section one of that Act included respectively references to the Minister of Works and to the provisions of this section:

Provided that section two of the said Act (which confers temporary powers for the speedy acquisition of land in urgent cases) shall not apply to the compulsory acquisition of land under this section. [2412]

(4) Any person having an interest in any building which it is proposed to acquire compulsorily under this section may, within twenty-eight days

after the service of the notice required to be served under paragraph 3 of the First Schedule to the Acquisition of Land (Authorisation Procedure) Act, 1946, apply to a court of summary jurisdiction for the petty sessional division or place within which the building to which the notice relates is situated for an order staying further proceedings on the compulsory purchase order, and if the court is satisfied that reasonable steps are being taken for properly preserving the building, they shall make an order accordingly.

Any person aggrieved by the decision of a court of summary jurisdiction under this subsection may appeal against that decision to a court of quarter sessions. [2413]

(5) Where any building is acquired under the provisions of subsection (1) of this section, the council of the county or county borough or county district, by whom the building is acquired shall observe the provisions of the building preservation order relating to that building. [2414]

(6) Without prejudice to the generality of the powers conferred by the foregoing provisions of this Part of this Act, any power of a local authority to acquire land by agreement thereunder shall include power to acquire by agreement any building as respects which a building preservation order has been or could be made by the local planning authority, and any land comprising or contiguous or adjacent to it which appears to the Minister to be required for the purposes specified in subsection (1) of this section. [2415]

*Effect of section.*—The powers of this section reinforce the powers as to building preservation orders given under s. 29, *ante*, to secure the preservation of buildings of special architectural or historic interest.

An interesting feature of this section is contained in sub-s. (4), *supra*, under which, on application to a court of summary jurisdiction, that court can make an order staying the submission of a compulsory purchase order to the Minister for confirmation. An appeal lies to Quarter Sessions.

*Building preservation order.*—See s. 29, *ante*.

*Where it appears to the Minister.*—See note to s. 4, *ante*.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Contiguous or adjacent.*—See note to s. 5, *ante*, on this phrase.

*Minister of Works.*—See note to s. 29, *ante*.

*Acquisition of Land (Authorisation Procedure) Act, 1946.*—39 Halsbury's Statutes 52. For ss. 1 (1) (b), 2 and Sched. I, para. 3, thereof, see 39 Halsbury's Statutes 55, 56, 62. Note that under the present section the power of speedy acquisition is excluded, as it is from s. 38, *ante*, though no such exclusion applies to the provisions of s. 37, *ante*.

The date of commencement of that Act was April 18, 1946.

*Appeal to a Court of Quarter Sessions.*—Time for appeal to Quarter Sessions will be fourteen days. For procedure, see the Summary Jurisdiction Act, 1879, s. 31 (11 Halsbury's Statutes 338), as amended by the Summary Jurisdiction (Appeals) Act, 1933, s. 1 (26 Halsbury's Statutes 546).

*Definitions.*—As to "local planning authority," see ss. 4, *ante*, and 119 (1), *post*. For definitions of "building," "land" and "local authority," see s. 119 (1), *post*.

**42. Power of local authorities to appropriate certain land for planning purposes.**—(1) Any local authority may be authorised, by order made by that authority and confirmed by the Minister, to appropriate for any purpose specified in a development plan (being a purpose for which that authority can be authorised to acquire land under any enactment) any land for the time being held by them for other purposes, being land which is or forms part of a common, open space or fuel or field garden allotment (including any such land which is specially regulated by any enactment, whether public general or local or private), other than land being Green Belt land as defined in the Green Belt (London and Home Counties) Act, 1938. [2416]

(2) Paragraph 11 of the First Schedule to the Acquisition of Land (Authorisation Procedure) Act, 1946 (which makes special provision with respect to compulsory purchase orders under that Act relating to land forming part of a common, open space or fuel or field garden allotment) shall apply to an order under this section authorising the appropriation of land as it applies to a compulsory purchase order under that Act. [2417]

(3) Without prejudice to the generality of the powers conferred by the foregoing provisions of this Part of this Act, any power of a local authority to acquire land (whether compulsorily or by agreement) thereunder shall

include power to acquire land required for giving in exchange for land appropriated under this section, or for Green Belt land appropriated, in accordance with the Green Belt (London and Home Counties) Act, 1938, for any purpose specified in a development plan. [2418]

(4) Section one hundred and sixty-three of the Local Government Act, 1933 (which contains general provisions as to the appropriation by local authorities of land belonging to them) shall not apply to land which a local authority have power to appropriate under subsection (1) of this section. [2419]

(5) Where any land appropriated under this section was acquired under any enactment incorporating the Lands Clauses Acts, any work executed on the land after the appropriation has been effected shall, for the purposes of section sixty-eight of the Lands Clauses Consolidation Act, 1845, be deemed to have been authorised by the enactment under which the land was acquired. [2420]

(6) On the appropriation of land under this section there shall be made in the accounts of the local authority such adjustments as the Minister of Health may direct. [2421]

*General note.*—This section follows s. 29 of the 1944 Act (37 Halsbury's Statutes 458) in authorising any use of land in accordance with the development plan, notwithstanding that the land is already held for other purposes.

Under this section, however, the appropriation for use in accordance with the plan must be confirmed by the Minister. If confirmed by the Minister, the land can be appropriated in accordance with the plan notwithstanding the fact that the land is specially regulated by any enactment (cf. *R. v. Minister of Health, Ex parte Villiers*, [1936] 2 K. B. 29; [1936] 1 All E. R. 817). Land which is Green Belt land under the Green Belt (London and Home Counties) Act, 1938 (31 Halsbury's Statutes 439), is excluded.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Common, open space or field or field garden allotment.*—By s. 119 (1), *post*, these terms have the same meanings as in the Acquisition of Land (Authorisation Procedure) Act, 1946. See s. 8 (1) of that Act (39 Halsbury's Statutes 61).

*Sub-s. (2).*—If the Minister certifies that equally advantageous land is being given in exchange or that the land is required for widening an existing highway and that no exchange is necessary the appropriation may be effected without further ado. If this certificate is not given, the order for appropriation will be subject to the procedure set out in the Statutory Orders (Special Procedure) Act, 1945 (38 Halsbury's Statutes 439).

*Green Belt land.*—This term is defined in the Green Belt (London and Home Counties) Act, 1938, s. 2 (1) (31 Halsbury's Statutes 439), as:

"(a) any land which for the time being is the subject of an express declaration made in manner provided by this Act or is under the provisions of this Act deemed to be Green Belt land; and

"(b) any land acquired by a local authority under the powers conferred by section 3 (Acquisition of and covenants relating to land and contributions to cost) of this Act;

"but shall not include any land which by virtue of the provisions of this Act or of any order made or consent given by the Minister under those provisions is freed from all the restrictions imposed upon it whether by this Act or by any declaration made in manner provided by this Act."

*Green Belt (London and Home Counties) Act, 1938.*—31 Halsbury's Statutes 439. The purpose of this Act was to preserve from industrial or building development areas of land in and around the administrative county of London.

*Acquisition of Land (Authorisation Procedure) Act, 1946, Sched. I, para. 11.*—39 Halsbury's Statutes 64.

*Sub-s. (3).*—This subsection gives power to acquire land for the purpose of being given in exchange for land appropriated under the present section.

*Local Government Act, 1933, s. 163.*—26 Halsbury's Statutes 396.

*Lands Clauses Acts.*—See 2 Halsbury's Statutes 1113 *et seq.*

*Lands Clauses Consolidation Act, 1845, s. 68.*—2 Halsbury's Statutes 1134. This section provides for the payment of compensation for injurious affection caused by the execution of any works authorised by the special Act applicable.

*Minister of Health.*—Note that, though the confirmation required by sub-s. (1), *ante*, is that of the Minister of Town and Country Planning, it is the Minister of Health who, under sub-s. (6), *supra*, is to direct adjustments in the accounts of local authorities.

*Definitions.*—As to "development plan," see ss. 5, *ante*, and 119 (1), *post*. For definitions of "local authority," "land" and "enactment," see s. 119 (1), *post*.

**43. Acquisition of land by Central Land Board.**—(1) The Central Land Board may, with the approval of the Minister, by agreement acquire land for any purpose connected with the performance of their functions under the following provisions of this Act, and in particular may so acquire any land for the purpose of disposing of it for development for which permission



has been granted under Part III of this Act on terms inclusive of any development charge payable under those provisions in respect of that development. [2422]

(2) If the Minister is satisfied that it is expedient in the public interest that the Board should acquire any land for any such purpose as aforesaid, and that the Board are unable to acquire the land by agreement on reasonable terms, he may authorise the Board to acquire the land compulsorily in accordance with the provisions of this section. [2423]

(3) Subsection (4) of section thirty-eight and section thirty-nine of this Act shall apply to the compulsory acquisition of land by the Central Land Board under this section as they apply to the compulsory acquisition of land by local authorities under the said section thirty-eight; and for the purposes of this section the Acquisition of Land (Authorisation Procedure) Act, 1946, shall have effect as if any reference therein to a local authority (except the references thereto in subsection (2) of section one and in paragraph 9 of the First Schedule) included a reference to the Board. [2424]

(4) Any land acquired by the Central Land Board under the provisions of this section shall be disposed of by them in accordance with such directions as may be given to them in that behalf by the Minister, and until the land is so disposed of the Board may manage it in accordance with such directions:

Provided that nothing in this section shall be construed as authorising the Board to carry out any development of land acquired by them thereunder. [2425]

(5) Any expenses incurred by the Central Land Board in the acquisition of land under this section shall be paid out of moneys provided by Parliament; and any sums received by the Board in respect of the disposal of any such land shall be paid into the Exchequer. [2426]

(6) Provision may be made by regulations under this Act for requiring the Central Land Board to keep a register containing such particulars as may be prescribed by the regulations of land acquired and disposed of under this section, and for the inspection of any such register by the public on payment of such reasonable fee, if any, as may be so prescribed. [2427]

*General note.*—Under this section the Central Land Board can acquire land by compulsion or by agreement and can dispose of it at a price which will include the development charge to any person who will develop it in accordance with the plan.

This power should be compared with the power of local authorities to acquire land under s. 38, *ante*, for the purpose of ensuring that the land in question is used in accordance with the plan.

One use to which this section may be put by the Board is in checking the amounts of development values. Throughout the country the Board can be expected to purchase lands as a representative sample which they will put on the market, very likely by auction, carrying planning permission and free of development charge, for the purpose of testing what development values are in the open market (see 149 H. of L. Official Report 715).

As to the position where compulsory powers are required to enable mineral development to be carried on, see also s. 81 (4), *post*.

*Central Land Board.*—For the constitution and functions of the Board, see ss. 2 and 3, *ante*.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Development charge.*—See ss. 69–74, *post*.

*If the Minister is satisfied.*—See note to s. 4, *ante*, on the phrase “If it appears to the Minister.”

*Acquisition of Land (Authorisation Procedure) Act, 1946.*—39 Halsbury's Statutes 52. For s. 1 (2) and Sched. I, para. 9, thereof, see 39 Halsbury's Statutes 55, 64.

*Regulations.*—For the general provisions applicable to regulations under the Act, see s. 111, *post*.

*Definitions.*—As to “development,” see ss. 12, *ante*, and 119 (1), *post*. For definitions of “land,” “functions” and “local authority,” see s. 119 (1), *post*.

**44. Incorporation of certain provisions of Act of 1944.**—(1) Sections nineteen to thirty of the Act of 1944 (which provide for the disposal and appropriation by local planning authorities of land acquired or appropriated under Part I of that Act, for the carrying out by such authorities of development of such land, and for other matters arising in relation to the acquisition of land under that Part) shall, except so far as repealed by this Act, be incorporated with this Part of this Act, subject to the amendments specified in



the second column of the Eighth Schedule to this Act and to the following provisions of this section. [2428]

(2) Subsection (3) of section twenty of the Act of 1944 (which provides that in certain cases the Minister shall not give his consent to the carrying out of any operation by the local planning authority under that section if a person other than that authority is able and willing to carry out the operation) shall cease to have effect. [2429]

(3) Section fifteen of the Act of 1944 (which relates to the purchase of licensed premises) shall apply in relation to premises comprised in land acquired under this Part of this Act, not being land in a licensing planning area within the meaning of the Licensing Planning (Temporary Provisions) Acts, 1945 and 1946, and the said section shall accordingly have effect subject to the amendments specified in relation thereto in the second column of the Eighth Schedule to this Act. [2430]

(4) Paragraph 9 of the Fifth Schedule to the Act of 1944 (which provides for the assessment at site values of compensation in respect of the compulsory acquisition of certain dwellinghouses unfit for human habitation) shall apply in relation to land compulsorily acquired under this Part of this Act and accordingly shall have effect subject to the amendments specified in relation thereto in the second column of the Eighth Schedule to this Act. [2431]

*General note.*—This section imports into the Act the provisions of the 1944 Act (37 Halsbury's Statutes 420) relating to the disposal and appropriation of land acquired for planning purposes (see Sched. XI, *post*).

The amendment contained in sub-s. (2), *supra*, removes the limitation contained in s. 20 (3) of the 1944 Act, which prevented local authorities from carrying out development where some other person was able and willing to carry it out. This amendment means that s. 20 (1) of the 1944 Act now effects a very substantial extension of the powers of local authorities: those powers now include power, with the consent of the Minister, to erect or carry out any building or work "notwithstanding any limitation imposed by law on the capacity of [the authority] by virtue of its constitution. . . ."

The powers of the local authority to dispose of the land are, however, restricted to the granting of 99-year leaseholds unless there are *exceptional* circumstances (see s. 19 (5) of the 1944 Act, reproduced in Sched. XI, *post*). This should be compared with the powers of the Central Land Board to dispose of the freehold for development under s. 43, *ante*. It seems that "exceptional circumstances" will be interpreted narrowly by the Minister. An example of buildings which have been accepted under the 1944 Act as exceptional are church buildings, since under Canon Law land cannot be consecrated for divine worship unless the freehold is held by the Church.

Note the requirement of s. 19 (6)–(7) of the 1944 Act (see Sched. XI, *post*) requiring local authorities to provide where practicable for the reinstatement of persons displaced from areas of comprehensive development; and also the power of the Minister to direct disposals and the manner, terms and conditions of such disposals.

The present section further provides for the application of s. 40 of the Housing Act, 1936 (29 Halsbury's Statutes 598), to any houses acquired which are unfit for human habitation. Such houses will be acquired at site value, provided an order under Sched. V to the Act of 1944 (see Sched. XI, *post*) either is made after the compulsory purchase order or has been made not earlier than two years before. Orders under para. 9 of Sched. V to the 1944 Act are, in effect, clearance orders under Part III of the Housing Act, 1936 (29 Halsbury's Statutes 584 *et seq.*).

*References to the Act of 1944.*—The Town and Country Planning Act, 1944, as originally enacted, is printed at 37 Halsbury's Statutes 420 *et seq.*, and, as amended by the present Act, is reproduced in Sched. XI, *post*. For ss. 15, 19–30 and Sched. V, para. 9, reference may therefore conveniently be made to Sched. XI, *post*.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Licensing Planning (Temporary Provisions) Acts, 1945 and 1946.*—38 Halsbury's Statutes 279; 39 Halsbury's Statutes 223. As to licensing planning areas, see s. 1 of the Act of 1945 (38 Halsbury's Statutes 280) and ss. 1 and 2 of the Act of 1946 (39 Halsbury's Statutes 224, 225).

*Definitions.*—As to "local planning authority," see ss. 4, *ante*, and 119 (1), *post*; and as to "development," see ss. 12, *ante*, and 119 (1), *post*. For definitions of "Act of 1944" and "land," see s. 119 (1), *post*.

**45. Amendment of 9 & 10 Geo. 6, c. 49, in relation to acquisition of land under Part IV.**—(1) Where any land is designated by a development plan under this Act as subject to compulsory acquisition for any purpose, then if a compulsory purchase order relating to that land is submitted to the confirming authority in accordance with Part I of the First Schedule to the Acquisition of Land (Authorisation Procedure) Act, 1946, or, as the case may be, is made in draft by a Minister in accordance with Part II of that

Schedule, the confirming authority or that Minister, as the case may be, may disregard for the purposes of that Schedule any objection to the order or draft which, in the opinion of that authority or Minister, amounts in substance to an objection to the provisions of the development plan defining the proposed use of that or any other land. [2432]

(2) Where a compulsory purchase order authorising the acquisition of any land under section thirty-eight of this Act is submitted to the Minister in accordance with Part I of the said First Schedule, then if the Minister is satisfied that the order ought to be confirmed so far as it relates to part of the land comprised therein, but has not for the time being determined whether or not it ought to be confirmed so far as it relates to any other such land, he may confirm the order so far as it relates to the first-mentioned land and give directions postponing the consideration of the order, so far as it relates to any other land specified in the directions until such time as may be so specified; and in any such case the notices required by paragraph 6 of the said First Schedule to be published and served shall include a statement of the effect of the directions. [2433]

(3) Paragraph 9 of the said First Schedule (which makes special provision in relation to the compulsory acquisition of land of local authorities and statutory undertakers and inalienable land of the National Trust) shall not apply to land which is designated by a development plan under this Act as subject to compulsory acquisition. [2434]

(4) Notwithstanding anything in paragraph 10 of the said First Schedule, a compulsory purchase order may be confirmed or made under this Act authorising the acquisition of land which has been acquired by statutory undertakers for the purposes of their undertaking (whether or not the land is designated as mentioned in the last foregoing subsection) without any such certificate as is mentioned in the said paragraph 10:

Provided that except where such a certificate is given as aforesaid, or the land is designated as mentioned in the last foregoing subsection,—

- (a) the order shall be of no effect unless it is confirmed or made by the appropriate Minister jointly with the Minister or Ministers who would apart from this provision have power to make or confirm it; and
- (b) if any objection to the order is duly made by the statutory undertakers and is not withdrawn, the order shall be subject to special parliamentary procedure. [2435]

(5) Where any such land as is mentioned in the last foregoing subsection is compulsorily acquired without any such certificate as is therein referred to, any compensation payable to the statutory undertakers in respect of the purchase shall be assessed in accordance with the provisions of the Fourth Schedule to the Act of 1944. [2436]

(6) Regulations made under this Act, may provide for securing that any proceedings required by the said First Schedule to be taken for the purposes of the compulsory acquisition of any land under this Act may be taken concurrently with any proceedings required by or under this Act to be taken in connection with the approval, making or amendment of a development plan designating that land as subject to compulsory acquisition. [2437]

(7) In construing the Lands Clauses Acts as incorporated, by virtue of paragraph 1 of the Second Schedule to the Acquisition of Land (Authorisation Procedure) Act, 1946, with Part IV of this Act—

- (a) references to the execution of the works shall be construed as including references to any erection, construction or carrying out of buildings or works authorised by section twenty-two of the Act of 1944 (as incorporated with this Part of this Act by virtue of section forty-four of this Act), and in relation to any such erection, construction or carrying out, the reference in section sixty-eight of the Lands

Clauses Consolidation Act, 1845, to the promoters of the undertaking shall, notwithstanding anything in sub-paragraph (b) of paragraph 1 of the Second Schedule to the Acquisition of Land (Authorisation Procedure) Act, 1946, be construed as references to the person by whom the buildings or works in question are erected, constructed or carried out;

- (b) references to the execution of the works shall be construed as including also references to any erection, construction or carrying out of buildings or works on behalf of a Minister, or by or on behalf of statutory undertakers, on land acquired by that Minister or those undertakers, for the purposes for which the land was acquired. [2438]

*Effect of section.*—This section amends the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Halsbury's Statutes 52). Under sub-s. (1), *ante*, where land has been designated, the confirming authority can disregard any objection to a compulsory purchase order which is in effect an objection to a provision in the development plan.

Sub-s. (2), *ante*, enables the confirming authority to postpone considering whether or not to confirm a compulsory purchase order so far as concerns part only of the land in question.

The provisions of the Statutory Orders (Special Procedure) Act, 1945 (38 Halsbury's Statutes 439), which would have been applicable under Sched. I, para. 9, to the Act of 1946, are excluded by sub-s. (3), *ante*, where land has been designated for compulsory purchase. The reason for this exclusion is that the designation in the plan has already been subject to special parliamentary procedure (see s. 5 (4) (c), *ante*).

Sub-s. (4), *ante*, authorises the confirmation of a compulsory purchase order in respect of land subject to Sched. I, para. 10, to the Act of 1946, despite the absence of the certificate required under that Act, provided the land is designated.

The next subsection provides for the compensation of statutory undertakers whose lands are acquired. Sub-s. (6), *ante*, enables compulsory purchase orders to be made concurrently with proceedings for the approval of the development plan.

Finally, sub-s. (7), *ante*, makes the person actually carrying out the development liable to meet claims for injurious affection under s. 68 of the Lands Clauses Consolidation Act, 1845 (2 Halsbury's Statutes 1134), instead of the acquiring authority who would be responsible under Sched. II, para. 1 (b), to the Act of 1946.

*Designated as subject to compulsory acquisition.*—As to designation, see ss. 5 and 9, *ante*.

*Acquisition of Land (Authorisation Procedure) Act, 1946.*—39 Halsbury's Statutes 52. For Sched. I, Part I and Part II, and Sched. II, see 39 Halsbury's Statutes 62, 63, 66.

*A Minister; the Minister; appropriate Minister.*—Note the different meanings attributable to these terms by virtue of s. 119 (1), *post*.

*If the Minister is satisfied.*—See note to s. 4, *ante*, on the words "If it appears to the Minister."

*National Trust.*—Land may be held inalienably by the National Trust under the National Trust Act, 1907, s. 21, or the National Trust Act, 1939, s. 8. Not being a public general statute, neither appears in Halsbury's Statutes.

*Act of 1944.*—The Town and Country Planning Act, 1944 (37 Halsbury's Statutes 420). For s. 22 and Sched. IV thereof, see Sched. XI, *post*, where the unrepealed provisions of the Act of 1944 are reproduced as amended by the present Act.

*Regulations.*—For the general provisions applicable to regulations under the Act, see s. 111, *post*.

*Lands Clauses Acts.*—See 2 Halsbury's Statutes 1113 *et seq*.

*Lands Clauses Consolidation Act, 1845,* s. 68.—2 Halsbury's Statutes 1134.

*Definitions.*—As to "development plan," see ss. 5, *ante*, and 119 (1), *post*. For definitions of "land," "a Minister," "the Minister," "local authority," "statutory undertakers," "appropriate Minister," "Act of 1944," "erection" and "buildings or works," see s. 119 (1), *post*.

**46. Acquisition of land by development corporations under New Towns Act, 1946.**—(1) For the removal of doubt it is hereby declared that the powers of acquiring land conferred by the New Towns Act, 1946 on a development corporation established for the purposes of a new town include power to acquire any land within the area designated under that Act as the site of the new town whether or not it is proposed to develop or re-develop that particular land. [2439]

(2) Section five of the said Act (which regulates the disposal of land by development corporations) shall have effect as if in subsection (1), after the words "this Act" in the second place where those words occur, there were inserted the words "or for purposes connected therewith". [2440]

*General note.*—In this section the legislature have taken the opportunity of correcting two minor flaws in the New Towns Act, 1946 (39 Halsbury's Statutes 661), which experience had shown to exist.

*New Towns Act, 1946.*—39 Halsbury's Statutes 661. For s. 5 thereof, see 39 Halsbury's Statutes 669.

*Definitions.*—As to "develop," see ss. 12, *ante*, and 119 (1), *post*. For definition of "land," see s. 119 (1), *post*.

*Powers Relating to Highways*

**47. Construction of highways on land acquired under Part IV.**—(1) Section ten of the Development and Road Improvement Funds Act, 1909 (which enables the Minister of Transport to authorise the construction of new roads in respect of which advances are made under that Act and provides for the expenses of the construction, and for the maintenance, of such roads) shall apply in relation to the construction of a new road by a local highway authority on land defined by a development plan as the site of a proposed road or on any other land acquired by or transferred to them under this Part of this Act as if the road were a road in respect of the construction of which an advance were made to that authority under that section. [2441]

(2) Without prejudice to the provisions of subsection (5) of section nineteen of the Restriction of Ribbon Development Act, 1935, and of subsection (8) of section six of the Trunk Roads Act, 1936 (which provide for contributions by local authorities towards expenses incurred by local highway authorities and by the Minister of Transport under those Acts) any local authority may contribute towards any expenses incurred by a local highway authority or by the Minister of Transport in the acquisition of land under this Part of this Act or in the construction or improvement of roads on land so acquired or in connection with any development required in the interests of the proper planning of the area of the local authority. [2442]

*General note.*—By this section provision is made for the construction of highways on land acquired under the plan and for expenses of construction and maintenance by applying s. 10 of the Development and Road Improvement Funds Act, 1909 (9 Halsbury's Statutes 213).

Local authorities are empowered to contribute towards any expenses incurred by the Minister of Transport or local highway authorities in respect of the acquisition of land under the plan or in the construction or improvement of roads on land so acquired.

*Development and Road Improvement Funds Act, 1909, s. 10.*—9 Halsbury's Statutes 213. The effect of this section is summarised in the text, *supra*.

*Local highway authority.*—This means a highway authority other than the Minister of Transport (s. 119 (1), *post*).

*Restriction of Ribbon Development Act, 1935, s. 19.*—28 Halsbury's Statutes 95. For the short effect of this section, see the text, *supra*.

*Trunk Roads Act, 1936, s. 6 (8).*—29 Halsbury's Statutes 194. This subsection is also summarised in the text, *supra*.

*Improvement.*—S. 119 (1), *post*, provides that this term, in relation to a highway, is to have the same meaning as the expression "improvement of roads" in Part II of the Development and Road Improvement Funds Act, 1909 (9 Halsbury's Statutes 212 *et seq.*), where the expression is defined as including "the widening of any road, the cutting off the corners of any road where land is required to be purchased for that purpose, the levelling of roads, the treatment of a road for mitigating the nuisance of dust, and the doing of any other work in respect of roads beyond ordinary repairs essential to placing a road in a proper state of repair." The expression "road" is similarly stated to include bridges, viaducts and subways (s. 8 (5) of the Act of 1909, *supra*; 9 Halsbury's Statutes 212).

*Definitions.*—As to "development plan," see ss. 5, *ante*, and 119 (1), *post*; and as to "development," see ss. 12, *ante*, and 119 (1), *post*. For definitions of "land" and "local authority," see s. 119 (1), *post*.

**48. Construction and improvement of private streets.**—(1) The provisions of this section shall apply in relation to any land defined by a development plan as the site of a proposed road, or as land required for the widening of any existing road which is of less than byelaw width, being land which is designated by the plan as land to which this section applies. [2443]

(2) Where any land is so defined and designated as aforesaid, the appropriate council as defined by this section may at any time by order declare the land (together with any land forming part of any such existing road as aforesaid) to be a private street, and thereupon the land shall be deemed to have been dedicated to the public and to be a private street:

Provided that no such order shall be made by the council in relation to land which has not been acquired by them at the date of the order (other than land forming part of any such existing road as aforesaid) except with the consent of all persons interested in the land. [2444]

(3) In relation to land which is deemed to be a private street by virtue

of a declaration under the last foregoing subsection, the provisions of the Private Street Works Act, 1892, or, in the case of land in a district in which that Act is not in force, the provisions of sections one hundred and fifty and one hundred and fifty-one of the Public Health Act, 1875 (including any provisions of that Act which relate to the said sections one hundred and fifty and one hundred and fifty-one) shall apply, subject to such exceptions, adaptations and modifications as may be prescribed by regulations made under this Act, as if the land were a street to which those provisions respectively apply. [2445]

(4) Regulations made for the purposes of the last foregoing subsection shall make provision for securing—

- (a) that the amount of the expenses incurred in the execution of street works charged under the provisions referred to in that subsection on the owners of adjoining land shall not exceed the amount which would, at the date of the commencement of the works, have been the cost of the execution of street works in the course of the construction, widening or improvement if it had been carried out so as to comply with the provisions of any byelaws, regulations or other enactments in force in the district, and, as respects matters for which no such provision is made, so as to comply with such requirements as would have been imposed by the highway authority at the date of the commencement of the works as a condition of declaring the street to be a highway repairable by the inhabitants at large ;
- (b) that as soon as the street has been made up or widened by or to the satisfaction of the appropriate council it shall become a highway repairable by the inhabitants at large ;
- (c) that no expenses incurred in the execution of any street works shall be recoverable against agricultural land or buildings until the land or buildings cease to be agricultural land or buildings ;
- (d) that no expenses incurred in the execution of street works for the purpose of making a new street shall be recoverable in respect of any land (whether the site of a building or not) unless and until access is provided for and used by persons or vehicles from that land to the new street. [2446]

(5) Regulations made for the purposes of subsection (3) of this section may provide—

- (a) for the inclusion in the expenses recoverable as aforesaid in respect of street works carried out by the appropriate council of any expenses incurred by a local authority, after the date on which the land is defined and designated as mentioned in subsection (1) of this section, and before it is declared to be a private street under subsection (2) of this section, in the construction of sewers in or under the land ; and
  - (b) for authorising the appropriate council to enter on any land adjoining the street for the purpose of executing street works on land comprised in the street. [2447]
- (6) In this section the following expressions have the meanings hereby respectively assigned to them, that is to say—

“ appropriate council ”, in relation to any land, means the council of the county borough or county district in which the land is situated or, in the case of land in a rural district, or land in any other county district which is defined by a development plan as the site of a road which is to become a county road, or as land required for the widening of such a road, the council of the county in which the land is situated ;

"byelaw width" in relation to a road, means the width required by any byelaws, regulations or enactments regulating the construction of streets in the area in which the road is situated ;

"construction" and "improvement", in relation to a street, include the planting, laying out, maintenance and protection of trees, shrubs and grass margins in and beside the street ;

"street works" means the sewerage, levelling, paving, metalling, flagging, channelling and making good a street or part of a street and providing proper means of lighting therefor. [2448]

(7) References in this section to sections one hundred and fifty and one hundred and fifty-one of the Public Health Act, 1875, shall be construed as including references to those sections as amended by any local Act, and to any local Act making provision corresponding with the provisions of those sections or of the Private Street Works Act, 1892 ; and the power of the Minister to make regulations under this section shall include power to make special regulations with respect to any district in which such a local Act is in force. [2449]

*General note.*—The appropriate council (see sub-s. (6), *ante*), can by order declare to be a private street any land defined and designated by a development plan as the site of a proposed road, or as land required for the widening of an existing road which is less than byelaw width ; but no such order may be made by the council in relation to land which has not been acquired by them at the date of the order (other than land forming part of any such existing road as aforesaid) without the consent of all persons interested in the land.

An order under this section brings into operation whatever enactments are in force in the district concerning the execution of private street works and the recovery of cost from the frontagers. The enactments relating to street works may be modified by regulations.

*Private Street Works Act, 1892.*—9 Halsbury's Statutes 193.

*Public Health Act, 1875, ss. 150 and 151.*—13 Halsbury's Statutes 686, 687. Note the interpretation to be given to the references to these sections by virtue of sub-s. (7), *supra*.

*Regulations.*—For the general provisions applicable to regulations under the Act, see s. 111, *post*. Note that sub-s. (7), *supra*, empowers the Minister to make special regulations with respect to any districts where local Acts are in force.

*Improvement.*—In relation to a *highway*, this term is defined by s. 119 (1), *post* (see also note to s. 47, *ante*) ; where it appears in the present section in relation to a *street*, it is defined by sub-s. (6), *supra*.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Definitions.*—As to "development plan," see ss. 5, *ante*, and 119 (1), *post*. For definitions of "land," "owner," "enactment," "agricultural," "building" and "local authority," see s. 119 (1), *post*.

**49. Power to stop up and divert highways, etc.**—(1) Without prejudice to the provisions of section twenty-three of the Act of 1944, as incorporated with this Act, or section three of the Acquisition of Land (Authorisation Procedure) Act, 1946, the Minister of Transport may, if he is satisfied that it is necessary so to do in order to enable development to be carried out in accordance with planning permission granted under Part III of this Act or to be carried out by a government department, by order made in accordance with the provisions of the Sixth Schedule to this Act authorise the stopping up or diversion of any highway. [2450]

(2) Any order made under the foregoing subsection may make such provision as appears to the Minister of Transport to be necessary or expedient for the provision or improvement of any other highway, and may direct—

- (a) that any highway so provided or improved shall be repairable by the inhabitants at large ;
- (b) that the said Minister, or any local authority specified in that behalf in the order, shall be the highway authority therefor ;
- (c) in the case of a highway for which the said Minister is to be the highway authority, that the highway shall, on such date as may be specified in the order, become a trunk road within the meaning of the Trunk Roads Acts, 1936 and 1946. [2451]

(3) The Minister of Transport or a local highway authority may be authorised to acquire land compulsorily for the purpose of providing or



improving any highway which is to be provided or improved in pursuance of an order made under this section or for any other purpose for which land is required in connection with such an order; and the Acquisition of Land (Authorisation Procedure) Act, 1946, shall apply to the compulsory acquisition of land under this section, and accordingly shall have effect—

- (a) as if this section had been in force immediately before the commencement of that Act;
- (b) as if this section were included among the enactments specified in paragraph (b) of subsection (1) of section one of that Act:

Provided that section two of the said Act (which confers temporary powers for the speedy acquisition of land in urgent cases) shall not apply to the compulsory acquisition of land under this section. [2452]

(4) Any order made under this section may contain such incidental and consequential provisions as appear to the Minister of Transport to be necessary or expedient, including in particular provision for authorising that Minister, or requiring any other authority or person specified in the order—

- (a) to pay, or to make contributions in respect of, the cost of doing any work provided for by the order or any increased expenditure to be incurred which is attributable to the doing of any such work;
- (b) to repay, or to make contributions in respect of, any compensation paid by the highway authority in respect of restrictions imposed under section one or section two of the Restriction of Ribbon Development Act, 1935, as respects any highway stopped up or diverted under the order:

Provided that if objection to any such provision is duly made in accordance with the Sixth Schedule to this Act by any authority or person who would be required thereby to make any such payment, repayment or contribution as aforesaid, and is not withdrawn, the order shall be subject to special parliamentary procedure. [2453]

(5) Regulations made under this Act by the Minister of Transport may provide for securing that any proceedings required to be taken for the purposes of the acquisition of land under subsection (3) of this section may be taken concurrently with any proceedings required to be taken for the purposes of the order under this section. [2454]

(6) Section twenty-five of the Act of 1944 (which, as amended by this Act, provides for the extinguishment of rights of way, and rights as to apparatus, of statutory undertakers over land acquired under this Part of this Act) shall, subject to any necessary modifications, apply in relation to any highway to which an order under this section relates as it applies in relation to land acquired by a Minister under this Part of this Act, and sections twenty-six and twenty-seven of that Act shall have effect accordingly. [2455]

(7) The powers of the Minister of Transport under subsection (1) of this section shall include power to make an order authorising the stopping up or diversion of any highway which is temporarily stopped up or diverted under any other enactment; and the provisions of this section shall not prejudice any power conferred upon the Minister of Transport by any other enactment to authorise the stopping up or diversion of a highway. [2456]

(8) Section three of the Acquisition of Land (Authorisation Procedure) Act, 1946 (which enables the Minister of Town and Country Planning to extinguish certain public rights of way over land acquired under that Act) shall apply in relation to land acquired before the commencement of that Act by a local authority, being—

- (a) land acquired compulsorily under any such enactment as is specified in paragraph (a) of subsection (1) of section one of that Act; or
- (b) land acquired by agreement for a purpose such that the land could have been so acquired compulsorily.



(9) Any expenses incurred by the Minister of Transport in the construction or improvement of roads under this section shall be defrayed out of the road fund, and any other expenses of that Minister under this section shall be defrayed out of moneys provided by Parliament. [2457]

*General note.*—By this section the Minister of Transport is empowered to authorise by order the stopping up or diversion of a highway if he is satisfied that it is necessary so to do in order to enable development to be carried out either in accordance with planning permission granted under Part III of the Act or by a government department. Wide ancillary powers are given to the Minister of Transport.

*References to the Act of 1944.*—The Act of 1944 is the Town and Country Planning Act, 1944; 37 Halsbury's Statutes 420 (see s. 119 (1), *post*). For ss. 23, 25, 26 and 27 thereof, see Sched. XI, *post*, which reproduces these sections as modified by the provisions of the present Act.

*Acquisition of Land (Authorisation Procedure) Act, 1946.*—39 Halsbury's Statutes 52. For ss. 1 (1) (a), (b), 2 and 3 thereof, see 39 Halsbury's Statutes 55, 56, 58. The date of commencement of that Act was April 18, 1946.

*Trunk Roads Acts, 1936 and 1946.*—29 Halsbury's Statutes 183; 39 Halsbury's Statutes 149. As to "trunk roads," see ss. 1, 2 and 13 (1) of the Act of 1936 (29 Halsbury's Statutes 185, 187, 200), and ss. 1 and 2 of the Act of 1946 (39 Halsbury's Statutes 151, 152).

*Appeal to the Minister.*—See note to s. 4, *ante*, on the words "If it appears to the Minister."

*Restriction of Ribbon Development Act, 1935, ss. 1 and 2.*—28 Halsbury's Statutes 81, 82.

*Regulations.*—Note that the regulations referred to in sub-s. (5), *ante*, are made by the Minister of Transport and not by the Minister of Town and Country Planning.

*Road fund.*—This fund was established by s. 3 of the Roads Act, 1920 (19 Halsbury's Statutes 87). See also in that connection 23 Halsbury's Statutes 670, 684; 26 Halsbury's Statutes 891; and 29 Halsbury's Statutes 772.

*Definitions.*—As to "development," see ss. 12, *ante*, and 119 (1), *post*. For definitions of "government department," "improvement" (in relation to a highway), "local authority," "local highway authority," "land," "statutory undertakers," and "enactment," see s. 119 (1), *post*.

\* \* \* \*

## PART VI

### PAYMENTS OUT OF CENTRAL FUNDS IN RESPECT OF DEPRECIATION OF LAND VALUES

#### *Payments for depreciation*

**58. Payments for depreciation of land values.**—(1) Subject to the provisions of this Part of this Act, payments shall be made in accordance with a scheme to be made by the Treasury under this section, in respect of interests in land which are depreciated in value by virtue of the provisions of this Act. [2458]

(2) The aggregate amount of the payments to be made by virtue of this section and of any corresponding provisions which may be enacted in relation to Scotland shall be the sum of three hundred million pounds, and that amount shall be apportioned, as between land in England and Wales and land in Scotland, in such manner as the Treasury may by order determine after they are sufficiently informed as to the development values of land in those countries respectively as ascertained for the purposes of this Part of this Act and of any such corresponding provisions as aforesaid. [2459]

(3) As soon as may be after they are sufficiently informed as to the development values of interests in land in respect of which claims are made for payments under this Part of this Act, the Treasury shall make a scheme providing for the distribution, as between those interests or such of them as may be prescribed by the scheme, of the sum apportioned under the last foregoing subsection to land in England and Wales. [2460]

(4) Without prejudice to the generality of the last foregoing subsection, any scheme made by the Treasury thereunder may provide for the ascertainment of the amount of the payments to be made under the scheme in respect of particular interests in land either by reference to the development values of those interests respectively or by reference to such other circumstances affecting those interests as may be prescribed by the scheme, or partly in the one way and partly in the other, and may contain such incidental and

consequential provisions as appear to the Treasury to be necessary or expedient, including provision—

- (a) for applying, in relation to any payment made in accordance with the scheme, all or any of the provisions of sections twenty-four to thirty of the War Damage Act, 1943 (which relate to the rights of mortgagees and certain other persons as to payments for war damage) subject to such adaptations and modifications as may be prescribed by the scheme ;
- (b) for enabling any such payment falling to be made in respect of a leasehold interest, or any part of such a payment, to be made, in such cases and subject to such conditions as may be prescribed by the scheme, to the lessor instead of to the lessee, and for any consequential modifications of the liabilities of the lessee under the lease ;
- (c) for the determination of questions arising under the scheme as to the right of any person to receive a payment, or any part of a payment, thereunder. [2461]

(5) The power of the Treasury to make a scheme under this section shall include power to amend any such scheme by a subsequent scheme made thereunder. [2462]

(6) A scheme made by the Treasury under this section shall be of no effect unless it is approved by resolution of each House of Parliament. [2463]

*Scheme.*—A scheme made under this Act and within the powers of the Act will have the force and effect of an Act of Parliament.

By sub-s. (5), *supra*, the power to make a scheme includes power to amend the scheme by a subsequent scheme.

The scheme will be of no effect unless it is approved by resolution of each House of Parliament.

*By virtue of the provisions of this Act.*—If land has been depreciated in value by reason of previous planning control and no compensation would have been payable under the previous Acts, then a payment for that depreciation cannot be claimed under this Act.

*After they are sufficiently informed.*—That is to say, as a result of the information given when claims for payment are made to the Central Land Board. Note the provisions contained in s. 60 (2), *post*, relating to this matter.

*War Damage Act, 1943, ss. 24–30.*—For these sections, see 36 Halsbury's Statutes 364–368.

*For the determination of questions arising under the scheme.*—Note the provisions contained in s. 60 (2) (a), *post*.

*The right of any person to receive a payment.*—The Act confers a right to claim for a payment, but is not at all clear about the right of any person to receive a payment. It is expected that the scheme will clarify this position and entitle some persons to receive a payment as of right. S. 60 (2) (c), *post*, also contains a reference to the right to a payment.

*Definitions.*—As to “war damage,” see s. 119 (1), *post*, and the War Damage Act, 1943, s. 2 (36 Halsbury's Statutes 338). For definitions of “land,” “leasehold interest” and “lease,” see s. 119 (1), *post*.

### 59. Additional payments in respect of certain war-damaged land.—

(1) Without prejudice to the provisions of the last foregoing section, the Treasury may make a scheme under this section providing for the making of payments of such amounts, in such cases, and subject to such conditions, as may be prescribed by the scheme, in respect of interests in land which are depreciated in value by virtue of the provisions of this Act, being land in the case of which it is shown—

- (a) that the land sustained war damage in such circumstances that the appropriate payment under the War Damage Act, 1943, in respect of a hereditament within the meaning of that Act which consists of or includes the whole or any part of the land is a value payment ;
- (b) that by reason of the prospects of development other than the making good of the war damage, the value of the hereditament in the state in which it was immediately after the occurrence of the damage is higher, and the amount of the value payment is accordingly lower, than it would be apart from the prospect of such development.

[2464]

(2) For the purposes of this section, a value payment shall be deemed to be the appropriate payment under the War Damage Act, 1943, in respect of a hereditament—

- (a) where such a payment would be appropriate thereunder, but no payment falls to be made because the value of the hereditament in the state in which it was immediately after the occurrence of the war damage is equal to or greater than its value in the state in which it was immediately before the occurrence of the damage; and
- (b) where a value payment falls to be made under any provision of the said Act in substitution for a payment of cost of works which, but for that provision, would be the appropriate payment. [2465]

(3) Any scheme made under this section may contain such incidental and consequential provisions as appear to the Treasury to be necessary or expedient, including provision for the matters specified in paragraphs (a) to (c) of subsection (4) of the last foregoing section. [2466]

(4) Any scheme made under this section shall be laid before Parliament immediately after it is made, and if either House within the period of forty days after the scheme is so laid before it, resolves that the scheme be annulled, it shall thereupon cease to have effect, but without prejudice to the validity of anything previously done thereunder or to the making of a new scheme. [2467]

(5) In reckoning for the purposes of the last foregoing subsection any such period of forty days no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days. [2468]

*Effect of section.*—Where a value payment has been calculated under the War Damage Act, 1943 (36 Halsbury's Statutes 334), on the assumption that the owner retains a development value in the land, if it were not for this section he would be deprived of that development value without compensation by the provisions of this Act. This section enables the Treasury to make a scheme providing for an additional payment in these circumstances to compensate for the loss of this development value. These payments will not come out of the £300,000,000, and will not be satisfied in stock, but in cash. See ss. 65 and 67, *post*. The scheme under this section can be expected to be ready long before the scheme under s. 58, *ante* (see 149 H. of L. Official Report 764).

One type of case which this section has particularly in mind is where "the value of a property after the bomb fell was larger than before"; in other words, where a lot of old poor-class development was wiped out by enemy action and the site is now available for re-development for a different purpose, for which there is a demand.

*Value payments and cost of works payments.*—See the War Damage Act, 1943, ss. 7 *et seq.* (36 Halsbury's Statutes 344 *et seq.*).

*Definitions.*—The term "war damage" is defined by s. 2 of the War Damage Act, 1943 (36 Halsbury's Statutes 338), and this definition is applied to the present Act by s. 119 (1), *post*. "Hereditament" is defined by s. 5 of the said Act of 1943 (36 Halsbury's Statutes 341). For definition of "development," see ss. 12, *ante*, and 119 (1), *post*; and as to "land," see s. 119 (1), *post*.

**60. Establishment of claims for payments.**—(1) Any claim for a payment under a scheme made under this Part of this Act shall be made to the Central Land Board in such manner, within such period, and accompanied by such particulars and verified by such evidence, as may be prescribed by regulations made for the purposes of this section, or as may be required by the Board in accordance with such regulations. [2469]

(2) Provision may be made by regulations under this Act for regulating the making of claims for payments under a scheme made under this Part of this Act and for the ascertainment, in the case of interests in land in respect of which claims are so made, of the development values of those interests and of such other particulars as may be required for the purposes of the preparation of a scheme under section fifty-eight of this Act or for the purposes of a scheme made under the last foregoing section; and without prejudice to the generality of the foregoing provision, such regulations may provide—

- (a) for requiring the development values of interests in land to be determined by such authority, in such manner and within such period

- as may be prescribed by the regulations, and for the settlement of any disputes arising in relation to such determinations by an arbitrator appointed in accordance with the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919, or by a special tribunal constituted in accordance with the regulations ;
- (b) for regulating the practice and procedure to be followed in connection with the making of any such determination and the settlement of any such dispute, and the time within which and the manner in which proceedings may be taken in respect of any alleged irregularity in connection therewith ;
  - (c) for rendering the right to a payment under this Part of this Act conditional upon compliance with the provisions of the regulations with respect to the making of claims ;
  - (d) for any matters incidental to or consequential on the matters aforesaid. [2470]

(3) A claim for a payment under a scheme made under this Part of this Act may be made in respect of any interest in land being an interest in fee simple or a leasehold interest as defined by this Act. [2471]

(4) Subject as hereinafter provided, a claim for a payment under a scheme made under this Part of this Act may be made in respect of such land as the claimant thinks fit, and different claims may be made in respect of the interest of the same person in different parcels of land :

Provided that the Central Land Board may direct that any two or more claims in respect of the interest of the same person in different parcels of land shall be dealt with together and treated as if they were one claim in respect of the interest of that person in the whole of the land included in the claims. [2472]

*General note.*—Where notice to treat for the compulsory acquisition of land has been served after the passing of the Act, the vendor will be the person to make the claim and not the acquiring authority, even though the acquisition is completed before the appointed day (s. 91 (2), *post*). Under s. 91 (4) (c), *post*, where the acquisition is by agreement the contract may provide that sub-ss. (2) and (3) of that section shall not apply.

*Central Land Board.*—For the constitution and functions of the Board, see ss. 2 and 3, *ante*.

*Regulations.*—For the general provisions applicable to regulations under the Act, see s. 111, *post*.

*Development values.*—For the rules for ascertaining development values, see s. 61, *infra*.

*Disputes.*—Note that the disputes mentioned in this paragraph are restricted to disputes arising in relation to the determination of development values ; no provision is made for the settlement of disputes as to the amount of the payment proposed to be made, or the right to receive a payment. Regulations made under s. 58, *ante*, may provide for the determination of questions as to the right of any person to receive a payment, but no provision is there made for the settlement of disputes arising in relation to any such determination.

*Acquisition of Land (Assessment of Compensation) Act, 1919.*—2 Halsbury's Statutes 1176. S. 1 of that Act provides that, in cases of compulsory acquisition by government departments, local or public authorities, *inter alia*, questions of disputed compensation are to be referred to and determined by the arbitration of such one of a panel of official arbitrators as may be selected in accordance with rules to be laid down.

*Sub-s. (3).*—Claims can only be made in respect of an interest in fee simple or a leasehold interest ; but see s. 58 (4) (a), *ante*, as to protection of the interests of mortgagees and others.

*Definitions.*—For definitions of "land" and "leasehold interest," see s. 119 (1), *post*.

**61. Ascertainment of development values of land.**—(1) For the purposes of this Part of this Act and of any scheme made thereunder an interest in land shall be deemed to be depreciated in value by virtue of the provisions of this Act if the restricted value of that interest on the appointed day, calculated in accordance with the provisions of this and the next following section, is less than the unrestricted value of that interest on that day as so calculated ; and references in this Part of this Act to the development value of an interest in land shall be construed as references to the difference between those values. [2473]

(2) Subject to the following provisions of this section—

- (a) the restricted value of an interest in land on the appointed day shall be taken to be the value of that interest as it subsists on

that day, calculated on the assumption that planning permission would be granted under Part III of this Act for development of any class specified in the Third Schedule to this Act, but would not be so granted for any other development ; and

- (b) the unrestricted value of an interest in land on the appointed day shall be taken to be the value which that interest would have had as it subsists on that day if the provisions of this Act (other than this and the next following section) had not passed. [2474]

(3) Where land is used on the appointed day for the display of advertisements, no account shall be taken, in calculating the restricted value of any interest therein, of any power to require the discontinuance of that use by virtue of regulations made under the provisions of Part III of this Act with respect to the control of advertisements. [2475]

(4) Where any permission to develop land granted on an application made in that behalf under an interim development order has been revoked or modified before the appointed day under section four of the Town and Country Planning (Interim Development) Act, 1943, the unrestricted value of any interest in that land shall be calculated without regard to the revocation or modification of that permission :

Provided that—

- (a) in calculating the unrestricted value of the interest no account shall be taken of any works in respect of which any compensation has been paid under subsection (2) of section seven of the said Act ; and

- (b) if any contribution has been paid under subsection (4) of the said section four to the owner of the interest or his predecessor in title, the amount of that contribution shall be deducted from the unrestricted value of the interest. [2476]

(5) For the purposes of this section, the restricted and the unrestricted values of interests in land shall be calculated by reference to prices current immediately before the seventh day of January, nineteen hundred and forty-seven, and for that purpose any such interest shall be treated as if it had been subsisting immediately before that date with all incidents to which it is subject on the appointed day (being incidents which are relevant to the calculation of the restricted or unrestricted value of that interest, as the case may be), and the land shall be treated as having been immediately before that date in the same state as it is on the appointed day :

Provided that in computing the restricted value of an interest in land, no account shall be taken of the provisions of this Act except in their application to that land. [2477]

(6) In computing the unrestricted value of the interest of any person in land which, on the appointed day, was held by him with other land, there shall be deducted—

- (a) an amount equal to the compensation (if any) to which that person would be entitled for the severance of the land from that other land if the first-mentioned land were compulsorily acquired by a government department in pursuance of a notice to treat given on the appointed day ; and

- (b) in so far as the unrestricted value of the land depends on the prospect of development which would injuriously affect that other land, an amount equal to the compensation (if any) to which that person would be entitled for such injurious affection if the first-mentioned land were compulsorily acquired as aforesaid for the purpose of that development. [2478]

- (7) In so far as the unrestricted value of an interest in land depends upon

the prospect of any development which, if carried out by the owner of that interest, would necessarily involve a loss to him in the nature of disturbance in respect of the purposes for which the land is being used on the appointed day, the amount of that loss shall be deducted from the unrestricted value of that interest. [2479]

*General note.*—For observations on this section, see the Preliminary Note, *ante*.

*Appointed day.*—Such day as the Minister of Town and Country Planning may by order appoint. July 1, 1948, has been so appointed (S.I. 1948 No. 213).

*Planning permission.*—See, generally, ss. 12 *et seq.*, *ante*.

*Display of advertisements.*—The term “advertisement” is widely defined in s. 119 (1), *post*. In Part III of the Act, s. 31, *ante*, provides for the making of regulations for the control of advertisements. See also s. 12 (4), *ante*.

*Town and Country Planning (Interim Development) Act, 1943.*—36 Halsbury's Statutes 239. For ss. 4 and 7 thereof, see 36 Halsbury's Statutes 244.

*Immediately before January 7, 1947.*—That is, immediately before the text of the Act, as a Bill, was published.

*Severance.*—Compensation for severance arises under ss. 49 and 63 of the Lands Clauses Consolidation Act, 1845 (2 Halsbury's Statutes 1128, 1133).

*Notice to treat.*—See s. 18 of the Lands Clauses Consolidation Act, 1845 (2 Halsbury's Statutes 1120), incorporated in the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Halsbury's Statutes 52).

*Injurious affection.*—See ss. 49 and 63 of the Lands Clauses Consolidation Act, 1845 (2 Halsbury's Statutes 1128, 1133), and note the expression “or otherwise injuriously affecting such lands.”

*Disturbance.*—See *Horn v. Sunderland Corpn.*, [1941] 2 K. B. 26; [1941] 1 All E. R. 480, particularly the judgment of SCOTT, L.J., for a clear explanation of the law relating to compensation for disturbance.

*Definitions.*—As to “develop” and “development,” see ss. 12, *ante*, and 119 (1), *post*. For definitions of “land” and “use,” see s. 119 (1), *post*.

**62. Supplementary provisions as to development values.**—(1) Rules (2) (3) and (4) of the Rules set out in section two of the Acquisition of Land (Assessment of Compensation) Act, 1919, shall apply in computing the restricted and the unrestricted values of interests in land for the purposes of this Part of this Act as they apply in relation to the compulsory purchase of interests in land. [2480]

(2) The restricted and the unrestricted values of an interest in land expectant on the determination of a lease shall be computed on the assumption that the lessee will at all times be able to pay the rent and perform his other obligations under the lease, and the restricted and the unrestricted values of a leasehold interest or of an interest expectant on the determination of a lease shall be computed as aforesaid on the assumption that any option exercisable by either party to determine or to renew the lease will be exercised by that party if it is in his interest so to do and not otherwise. [2481]

(3) The restricted and the unrestricted values of an interest in land which is subject to a mortgage shall be computed as if the mortgage had been discharged. [2482]

(4) It is hereby declared that the restricted or the unrestricted value, or both the restricted and the unrestricted values, of an interest in land may be a minus quantity. [2483]

*Acquisition of Land (Assessment of Compensation) Act, 1919, s. 2, Rules (2), (3) and (4).*—2 Halsbury's Statutes 1178. These Rules are as follows:—

“(2) The value of land shall, subject as hereinafter provided be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise: Provided always that the arbitrator shall be entitled to consider all returns and assessments of capital value for taxation made or acquiesced in by the claimant:

“(3) The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any Government Department or any local or public authority: Provided that any bona fide offer for the purchase of the land made before the passing of this Act which may be brought to the notice of the arbitrator shall be taken into consideration:

“(4) Where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the inmates of the premises or to the public health, the amount of that increase shall not be taken into account.”

*Restricted and unrestricted values.*—These terms are defined respectively in s. 61 (2) (a) and (b), *ante*. The development value of an interest in land is the difference between the restricted and unrestricted values (s. 61 (1), *ante*).



*Option to determine or to renew the lease.*—It is more usual for an option to be exercisable by a lessee only, but options exercisable by either party are not uncommon. By entering into a lease for a fairly long term with the insertion of an option to determine exercisable on either side, the parties avoid the trouble and expense of frequent renewals. Thus, instead of granting a lease for seven years with an option to renew for a further seven or fourteen years, it is quite usual for a lessor to grant a lease for twenty-one years determinable at the end of seven or fourteen. The essence of an option is that it can be exercised by the person in whose favour it is given without any further consent on the part of the donor, but the conditions of exercise must be carefully observed.

*Sub-s. (4).*—This subsection would cover the case of the tail end of a lease containing fairly onerous repairing covenants. The tenancy might be worth nothing or perhaps even involve a minus quantity. The restricted value might be minus two and the unrestricted value minus one. This subsection gives the owner of the interest the right to claim the difference between the two minus quantities.

*Definitions.*—For definitions of "land," "lease" and "leasehold interest," see s. 119 (1), *post*.

**63. Exclusion of small claims.**—(1) Without prejudice to any provisions which may be included in a scheme made under section fifty-eight of this Act for prescribing the cases in which payments are to be made thereunder, no such payment shall be made in respect of an interest in land in respect of which a claim is made unless—

- (a) the development value of that interest, when averaged over the area of the land, exceeds the rate of twenty pounds per acre; and
- (b) the development value of that interest also exceeds one tenth of its restricted value. [2484]

(2) In determining for the purposes of paragraph (b) of the foregoing subsection whether the development value of an interest in land exceeds one tenth of its restricted value, those values shall be calculated—

- (a) in the case of a leasehold interest, as if the rent payable under the lease were a rent of a peppercorn;
- (b) in the case of an interest which is subject to a rentcharge, as if the interest were not subject thereto. [2485]

*Development value.*—The difference between the restricted and unrestricted values (s. 61 (1), *ante*).

*Restricted value.*—The value of an interest in land on July 1, 1948, calculated on the assumption that planning permission would be granted for the minor types of development specified in Sched. III, *post*, but would not be granted for any other development (s. 61 (2) (a)).

*Sub-s. (2).*—The purpose of this subsection is to overcome the difficulty which would otherwise arise where the restricted value is nil.

*Rent of a peppercorn.*—A purely nominal rent. "A peppercorn rent" or a "rent of one peppercorn, if demanded" was the ancient method of preserving the relationship of landlord and tenant without requiring any substantial rent. In later days it figured in attornment clauses in mortgages where the draftsman's aim was to produce a notional relation of landlord and tenant between mortgagee and mortgagor, though in recent years the phrase has tended to fall into disuse.

*Definitions.*—For definitions of "land," "leasehold interest," "lease" and "mortgage," see s. 119 (1), *post*.

**64. Vesting and assignment of right to payments under Part VI.**—(1) Subject to the provisions of any scheme made under this Part of this Act with respect to the disposal of payments made thereunder, the right to receive any such payment in respect of an interest in land shall vest in the person who is on the appointed day the owner of that interest. [2486]

(2) The right to receive a payment under any scheme made under this Part of this Act, or a part of such a payment, shall be transmissible by assignment or by operation of law as personal property:

Provided that regulations made under this Act may direct that any such assignment shall be of no effect for the purposes of any such scheme as aforesaid unless notice thereof has been given to the Central Land Board, in the manner prescribed by the regulations, within such period as may be so prescribed. [2487]

(3) Subject to the following provisions of this section the reference in this section to the owner of an interest in land shall be construed as a reference to the person in whom the legal estate in respect of the interest is vested or,



if the interest is a tenancy under an agreement for a lease, to the person entitled to have vested in him the legal term agreed to be created. [2488]

(4) Where the legal estate or the title thereto, as the case may be, in respect of an interest in land is vested in the official trustee of charity lands or other trustee on or for charitable, ecclesiastical or public trusts or purposes not entitled to act in the trust, or in the Public Trustee holding in circumstances in which he is not entitled to act in the trust then,—

(a) in the case of a trustee on or for charitable, ecclesiastical or public trusts or purposes, the managing trustees or committee of management shall be deemed for the purposes of this section to be the owner of the interest ;

(b) in the case of the Public Trustee, the person in receipt of the rent incident to the Public Trustee's estate, or, if there is no rent incident thereto, the person in occupation of the land, shall be deemed for those purposes to be the owner of the interest. [2489]

(5) Where under section nine of the Administration of Estates Act, 1925, or section fifteen of the Court of Probate (Ireland) Act, 1859, the estate of a person who died intestate is vested in the Probate Judge, that judge shall not be deemed for the purposes of this section to be the owner of any interest in land comprised in the estate, but upon administration being granted the administrator shall be deemed for those purposes to have been the owner thereof as from the date of the death. [2490]

(6) In relation to requisitioned land the reference in paragraph (b) of subsection (4) of this section to rent shall be construed as including a reference to compensation payable under the Compensation (Defence) Act, 1939, or under any such agreement as is mentioned in section fifteen of that Act, and the reference in the said paragraph (b) to the person in receipt of rent shall be construed as a reference to the person who is, or, if a claim therefor had been duly made under that Act, would have been, in receipt of such compensation as aforesaid. [2491]

*Vesting of right to receive payment.*—Note, in connection with sub-s. (1), the provisions contained in s. 91, *post* (land in process of acquisition at the appointed day).

*Appointed day.*—This means such day as the Minister may by order appoint. July 1, 1948, has been so appointed (S.I. 1948 No. 213).

*Assignment.*—Note that notice of assignment may have to be given to the Central Land Board, though no regulations under sub-s. (2), *ante*, had been made up to the time of going to press.

*Operation of law.*—*E.g.* on death or bankruptcy.

*Personal property.*—Personal property comprises all forms of property, movable or immovable, corporeal or incorporeal, other than freehold estates and interests in land. Certain interests concerning or savouring of realty called “chattels real,” though strictly personalty, tended to be of a hybrid nature and the present provision, inserted *ex abundanti cautela* on account of the close relation to land of payments under the schemes referred to, obviates any possible difficulty that might have arisen as to the nature of the payments.

*Regulations.*—For the general provisions applicable to such regulations, see s. 111, *post*.

*Legal estate in respect of the interest.*—This links up with s. 60 (3), *ante*, whereby claims for payment may be made in respect of interests in fee simple and leasehold interests as defined in s. 119 (1), *post*. The whole basis of claims, subject to the special cases for which provision is made by sub-ss. (4) and (5), *supra*, is the legal estate, whether freehold or leasehold (see the Law of Property Act, 1925, s. 1 (1) ; 15 Halsbury's Statutes 177).

*Administration of Estates Act, 1925, s. 9.*—8 Halsbury's Statutes 313. This section provides that, until a grant of administration is made, the real and personal estate of an intestate is to vest in the Probate Judge in the same manner and to the same extent as formerly in the case of personal estate it vested in the ordinary. “Intestate” in this section, *semble*, means “without having appointed an executor or having appointed an executor whose rights in respect of the executorship have wholly ceased.” Though the term is defined by s. 55 (1) (vi) of the same Act (8 Halsbury's Statutes 357), the definition there is not exhaustive.

*Court of Probate (Ireland) Act, 1859.*—22 & 23 Vict. c. 31.

*Compensation (Defence) Act, 1939.*—32 Halsbury's Statutes 1013. This Act makes provision for compensation to be paid in respect of action taken on behalf of the Crown in the exercise of certain emergency powers, notably the taking possession of land and the requisitioning of property other than land.

*Any such agreement as is mentioned, etc.*—S. 15 of the Compensation (Defence) Act, 1939 (32 Halsbury's Statutes 1028), reads as follows :—

“The provisions of this Act shall be without prejudice to any agreement for the making of any payment (whether by way of compensation or otherwise) in respect of the doing of anything on behalf of His Majesty in the exercise of emergency powers ;

but, where compensation in respect of the doing of anything as aforesaid, would, apart from this section, be payable both under this Act and under some other enactment or rule of law, then, subject to any such agreement as aforesaid, the compensation shall be payable in accordance with this Act and not otherwise."

*Definitions.*—As to "requisitioned land," see ss. 89 and 119 (1), *post*. For definition of "land," see s. 119 (1), *post*.

### *Satisfaction of Payments*

**65. Satisfaction of payments under Part VI.**—(1) All payments falling to be made in accordance with a scheme made under section fifty-eight of this Act shall be satisfied by the issue of government stock, that is to say stock the principal of which and the interest on which shall be charged on the Consolidated Fund; and all payments falling to be made in accordance with a scheme made under section fifty-nine of this Act shall be made in cash by the Central Land Board. [2492]

(2) Any such stock shall be issued on such date as may be fixed by the Treasury, being a date not later than five years after the appointed day:

Provided that if the amount of any payment required by this section to be satisfied by the issue of stock has not been finally determined on the date so fixed, the stock to be issued in satisfaction of the payment shall be issued on such date not being later than three months after the amount thereof has been so determined as the Treasury may direct. [2493]

(3) Interest on the amount of any payment falling to be made in accordance with a scheme made under this Part of this Act shall accrue, at such rate as may from time to time be determined by the Treasury, from the appointed day until the payment is satisfied in accordance with the provisions of this section, and shall be paid in cash by the Central Land Board at the time when the payment is so satisfied. [2494]

(4) The amount of the stock to be issued in satisfaction of any payment under this Part of this Act shall be such as, in the opinion of the Treasury, is of a value equal on the date of the issue to the amount of the payment, having due regard to the market values of other government securities existing on that date. [2495]

(5) The Treasury may by regulations make provision as to the procedure for the issue of stock in satisfaction of payments under this Part of this Act including provision as to evidence of the amount of stock to be issued in any case, and the person to whom it is to be issued, on which the Banks of England and Ireland respectively are to be authorised or required to act. [2496]

*General note.*—This section deals with the satisfaction of two kinds of payment. First, where claims for depreciation of land values have been admitted, the claimant becomes entitled to a payment from the global sum of £300,000,000 referred to in s. 58, *ante*, but this will not be paid in cash but, as under many other compensation provisions of present-day nationalisation schemes, by the issue of stock (compare, for instance, the Electricity Act, 1947, s. 20, title ELECTRICITY SUPPLY, *ante*), in this case of negotiable government stock. It will not be possible to issue the stock until much preliminary work has been completed, so sub-s. (2), *supra*, provides for its issue at a date not later than five years after the appointed day, subject to a proviso to meet cases where the amount of the payment has not then been finally settled. By sub-s. (4) the amount of the stock is to be based on the market values of other government securities on the date of issue, the whole procedure being subject to detailed regulations to be made by the Treasury (sub-s. (5)).

Secondly, the section deals with satisfaction of the additional payments to be made in respect of certain war-damaged land under s. 59, *ante*. Here, in contrast to the previous case, payment is to be in cash.

Interest at a rate to be settled by the Treasury is to be paid for the period from July 1, 1948, to the date of actual satisfaction. Payment of interest is to be by cash and not by stock (compare interest on payments under the War Damage Act, 1943; 36 Halsbury's Statutes 334).

*Central Land Board.*—For the constitution and functions of the Board, see ss. 2 and 3, *ante*.

*Appointed day.*—This means such day as the Minister of Town and Country Planning may by order direct (s. 119 (1), *post*). July 1, 1948, has been so appointed (S.I. 1948 No. 213).

*Interest on the amount of any payment.*—Tax will be deducted from interest payments (see Explanatory Memorandum on the Bill (Cmd. 7006), at p. 9).

*Regulations.*—For the general provisions applicable to regulations under the Act, see s. 111, *post*.

**66. General provisions as to stock.**—(1) Any stock issued in accordance with the last foregoing section (in this section referred to as "the stock") shall bear such rate of interest, and shall be subject to such conditions as to repayment, redemption and other matters (including provision for a sinking fund), as the Treasury may determine. [2497]

(2) Any expenses incurred in connection with the issue or repayment of the stock shall be charged on and issued out of the Consolidated Fund. [2498]

(3) The Treasury may, for the purpose of providing any sums required by them in order to redeem the stock, raise money in any manner in which they are authorised to raise money under the National Loans Act, 1939, and any securities created and issued to raise money under this subsection shall be deemed for all purposes to have been created and issued under that Act. [2499]

(4) Interest on the stock shall be paid out of the permanent annual charge for the national debt. [2500]

(5) There shall be paid to the Banks of England and Ireland respectively, out of the Consolidated Fund, such sum in respect of the management of the stock in any financial year as may be agreed upon between the Treasury and those banks respectively. [2501]

(6) Section forty-seven of the Finance Act, 1942 (which empowers the Treasury to make regulations as respects the transfer and registration of stock and registered bonds of the descriptions specified in Part I of the Eleventh Schedule to that Act) and any regulations made under that section which are in force immediately before the passing of this Act, shall have effect as if the stock were included among the stocks mentioned in the said Part I and among the stocks to which the said regulations apply. [2502]

(7) The stock shall be subject to the provisions of the National Debt Act, 1870, so far as is consistent with the tenor of this Act. [2503]

(8) Paragraphs 3, 4 and 5 of the Second Schedule to the National Loans Act, 1939 (which applies certain enactments to securities issued under that Act) shall have effect as if references to securities so issued included references to the stock. [2504]

*General note.*—This section elaborates the conditions subject to which the negotiable government stock referred to in the previous section is to be issued. A wide discretion is given to the Treasury to determine the rate of interest which the stock will bear and the other terms of issue.

*National Loans Act, 1939.*—32 Halsbury's Statutes 1235. This Act gives the Treasury wide powers as to the raising of money. S. 4 thereof (32 Halsbury's Statutes 1237) authorises trustees to invest in securities issued under the Act. Cf. s. 3 of the Act (32 Halsbury's Statutes 1237) with the present section.

For Sched. II, paras. 3, 4 and 5 to the said Act, see 32 Halsbury's Statutes 1239.

*Finance Act, 1942, s. 47.*—35 Halsbury's Statutes 188. The effect of this section is briefly summarised in sub-s. (6), *supra*.

*Passing of this Act.*—August 6, 1947.

*National Debt Act, 1870.*—16 Halsbury's Statutes 258. This Act has been widely applied in the past, e.g. to local loans stock under the National Debt and Local Loans Act, 1887 (12 Halsbury's Statutes 282).

**67. Provision for payments in cash.**—(1) The Treasury may issue to the Central Land Board out of the Consolidated Fund such sums as are necessary to enable the Board to make any payments which under this Part of this Act are payable by the Board in cash. [2505]

(2) For the purpose of providing sums to be issued under the last foregoing subsection, or of providing for the replacement of sums so issued, the Treasury may at any time, if they think fit, raise money in any manner in which they are authorised to raise money under the National Loans Act, 1939, and any securities created and issued to raise money under this section shall be deemed for all purposes to have been created and issued under that Act. [2506]

*General note.*—Just as the previous section elaborated the provisions of s. 65 in regard to the issue of stock, so this section elaborates its provisions in regard to payments in cash.

*Central Land Board.*—For the constitution and functions of this Board, see ss. 2 and 3, *ante*.

*National Loans Act, 1939.*—32 Halsbury's Statutes 1235. See note to s. 66, *ante*.

**68. Payments by Central Land Board into Exchequer.**—(1) The Central Land Board shall, out of moneys provided by Parliament, pay into the Exchequer in accordance with the following provisions of this section sums equal to the aggregate amount of—

- (a) the amount of any payments satisfied by the issue of stock under the foregoing provisions of this Part of this Act; and
- (b) the amount of any sums issued to the Board out of the Consolidated Fund under the last foregoing section in respect of interest on such payments,

together with interest on the said aggregate amount at such rate as the Treasury may direct from the date of the issue. [2507]

(2) The sums required by the foregoing subsection to be paid into the Exchequer by the Central Land Board shall be paid by twenty equal instalments of principal and interest, of which the first shall be paid one year after the date fixed by the Treasury for the issue of the stock, and the remainder annually thereafter:

Provided that where any payment made under this Part of this Act is satisfied, in accordance with the proviso to subsection (2) of section sixty-five of this Act, by the issue of stock at any time after the date fixed as aforesaid, the sums required to be paid into the Exchequer under this section in respect of that payment, and in respect of sums issued to the Board under the last foregoing section in respect of interest thereon, shall be so paid by such number of equal annual instalments of principal and interest as will complete the instalments on the same date as the instalments in respect of payments which are satisfied on the date fixed as aforesaid. [2508]

(3) Any sums paid into the Exchequer under the foregoing provisions of this section shall be issued out of the Consolidated Fund at such times as the Treasury may direct, and shall be applied by the Treasury as follows, that is to say—

- (a) so much thereof as represents principal shall be applied in redeeming or paying off debt of such description as the Treasury think fit;
- (b) so much thereof as represents interest shall be applied to the payment of interest which would, apart from this provision, have fallen to be paid out of the permanent annual charge for the national debt. [2509]

*General note.*—The effect of this section is summarised in the Explanatory Memorandum on the Bill (Cmd. 7006), at p. 11, as follows:—

"The Exchequer will recover a sum equal to the amount of payments satisfied by the issue of stock, and accrued interest on those payments, by way of twenty annuity payments charged on the Central Land Board's Vote. These annuity payments will be applied, as to principal, to the redemption of debt, and as to interest, to the payment of interest on the National Debt. Development charges collected by the Central Land Board will be paid into the Exchequer and will thus be available to be appropriated in aid of the Board's Vote."

*Central Land Board.*—For the constitution and functions of the Board, see ss. 2 and 3, *ante*.

## PART VII

### DEVELOPMENT CHARGES

**69. Levy of development charge in respect of certain development.**—

(1) Subject to the provisions of this Act, there shall be paid to the Central Land Board in respect of the carrying out of any operations to which this Part of this Act applies, and in respect of any use of land to which this Part of this Act applies, a development charge of such amount (if any) as the

Board may determine, and accordingly no such operations shall be carried out, and no such use shall be instituted or continued, except with the consent in writing of the Central Land Board, until the amount of the charge (if any) to be paid in respect of those operations or that use has been determined by the Board in accordance with the provisions of this Part of this Act, and the Board have certified that the amount so determined has been paid or secured to their satisfaction in accordance with those provisions. [2510]

(2) This Part of this Act applies to all operations for the carrying out of which planning permission under Part III of this Act is required, and to all uses of land for the institution or continuance of which such permission is so required :

Provided that—

(a) this Part of this Act does not (except as hereinafter provided) apply to operations of any description specified in the Third Schedule to this Act or to any use of land so specified ;

(b) regulations made under this Act with the consent of the Treasury may provide for exempting from the provisions of this Part of this Act operations or uses of any description specified in the regulations. [2511]

(3) Notwithstanding anything in paragraph (a) of the proviso to the last foregoing subsection, where planning permission is granted under Part III of this Act for the carrying out of operations of any class specified in the Third Schedule to this Act, or for the institution of any use so specified, then if—

(a) compensation has been paid under section twenty of this Act in consequence of a previous refusal of permission for those operations or that use or of the grant of such permission subject to conditions, or in consequence of the revocation or modification of permission so granted ; or

(b) compensation has been paid under section twenty-seven of this Act in consequence of an order requiring the removal of any building or the discontinuance of any use of land, and the planning permission authorises the rebuilding of that building or the resumption of that use,

this Part of this Act shall apply to those operations, or to that use, as the case may be ; and where the amount of the development charge to be paid in respect of those operations or that use has been determined by the Central Land Board in accordance with the provisions of this Part of this Act, the Board may pay to any local authority by whom any such compensation as aforesaid has been paid a contribution towards that compensation not exceeding the said amount. [2512]

(4) Where, by virtue of any provision of this Act, planning permission under Part III of this Act is granted in respect of the retention on land of any buildings or works erected or carried out in accordance with planning permission granted for a limited period only, this Part of this Act shall apply to the retention of the buildings or works as it applies to operations for which planning permission under Part III of this Act is required ; and references in this Part of this Act to the carrying out of such operations shall be construed accordingly. [2513]

(5) Regulations made for the purposes of paragraph (b) of the proviso to subsection (2) of this section shall be of no effect unless they are approved by resolution of each House of Parliament. [2514]

(6) Any sums required by the Central Land Board for the making of contributions under this section shall be defrayed out of moneys provided by Parliament. [2515]

*General note.*—This section provides :—

1. That a development charge shall be paid to the Central Land Board in respect of development for which planning permission is required under Part III of the Act.

2. That normally no development charge shall be paid in respect of—

(a) development specified in Sched. III ; and

(b) development exempted by regulations made with the consent of the Treasury.

3. That a development charge shall be payable where planning permission is granted for development of any class described in Sched. III in cases where—

(a) compensation has been paid in respect of a previous refusal under s. 20, *ante*, or in consequence of a revocation or modification of permission previously granted ;

(b) compensation has been paid under s. 27, *ante*, in respect of an order requiring the removal of any building or the discontinuance of any use of land, and the planning permission now granted authorises the rebuilding of that building or the resumption of that use.

The Central Land Board may pay to any local authority who has paid such compensation as above mentioned a contribution towards that compensation not exceeding the amount of the development charge.

4. That a development charge shall be paid in cases where planning permission is granted under Part III in respect of the retention of buildings or works erected or carried out in accordance with planning permission granted for a limited period only.

5. That any regulations made with the consent of the Treasury under sub-s. (2) (b), *ante*, shall be of no effect unless they are approved by resolution of each House of Parliament. This is an example of the so-called " affirmative resolution procedure " to which ss. 4-7 of the Statutory Instruments Act, 1946 (39 Halsbury's Statutes 785 *et seq.*), are inapplicable.

*Central Land Board.*—See ss. 2 and 3, *ante*.

*As the Board may determine.*—The Board's decision is final and conclusive.

*No such operation shall be carried out.*—If development is carried out in contravention of this section, the Board may impose a penalty not exceeding the amount of the development charge subsequently fixed by the Board (s. 73 (2), *post*).

*Paid or secured.*—See s. 71, *post*.

*Regulations.*—See s. 111, *post*.

*Sub-s. (3).*—What this subsection, in effect, provides is that if a person has received compensation for loss of development rights which he would otherwise have had under Sched. III, then if he regains those rights he must pay a development charge.

*Not exceeding the said amount.*—That is, the amount of the development charge determined by the Board.

*Sub-s. (4).*—See s. 18, *ante*.

*Definitions.*—As to " planning permission," see ss. 12, *ante*, and 119 (1), *post* ; as to " permission granted for a limited period only," see ss. 14, *ante*, and 119 (1), *post*. For definitions of " use," " land," " building," " local authority " and " buildings or works," see s. 119 (1), *post*.

## 70. Determination of development charge by Central Land Board.—

(1) Subject as hereinafter provided, the Central Land Board shall, on application being made to them in the manner prescribed by regulations under this Act by a person having an interest in land sufficient to enable him to carry out such operations as aforesaid or to make any such use as aforesaid, or by a person who satisfies them that he is able to obtain such an interest, determine whether any and if so what development charge is to be paid in respect of those operations or that use :

Provided that—

(a) where planning permission under Part III of this Act has not been granted for the carrying out of the said operations or for the institution or continuance of the said use, the Board may postpone the determination of the development charge to be paid in respect thereof until such permission has been granted ;

(b) where the application relates to the carrying out of any operations, the Board may refuse to determine the development charge payable in respect thereof unless they are satisfied, after consultation with the local planning authority, that the applicant is able to carry out those operations, and that he will do so within such period as the Board consider appropriate ;

(c) where the application relates to the institution of any use of land, the Board may refuse to determine the amount of the charge in respect thereof unless they are satisfied, after consultation with the local planning authority, that the use will be instituted within such period as the Board consider appropriate. [2516]



(2) In determining whether any and if so what development charge is to be paid under this Part of this Act in respect of any operations or any use of land, the Board shall have regard to the amount by which the value of the land with the benefit of planning permission for those operations or that use (calculated without regard to any charge payable in respect thereof under this Part of this Act and on the assumption that the operation or use can lawfully be carried out or made apart from the provisions of this Act) exceeds the value which it would have without the benefit of such permission, and shall not give any undue or unreasonable preference or advantage to one applicant over another. [2517]

(3) Subject to the provisions of the last foregoing subsection, regulations made under this Act with the consent of the Treasury may prescribe general principles to be followed by the Central Land Board in determining under this Part of this Act whether any and if so what development charge is to be paid thereunder in respect of any operations or use of land, and without prejudice to the generality of the foregoing provision, such regulations may in particular provide for securing that the amount of the said charge shall be determined on different principles in relation to operations or uses of different classes, or in relation to operations or uses carried out or begun at different periods. [2518]

(4) Where planning permission for any operations, or for any use of land, is granted under subsection (6) of section twenty-six of this Act, or directions are given under subsection (2) of section nineteen of this Act requiring such permission to be granted on application made in that behalf, the Board may determine the amount of the development charge (if any) which would be payable under this Part of this Act in respect of those operations or that use, notwithstanding that no such application as is mentioned in this section has been made to them in that behalf. [2519]

(5) Regulations made for the purposes of subsection (3) of this section shall be of no effect unless they are approved by resolution of each House of Parliament. [2520]

*Central Land Board.*—For the constitution and functions of the Board, see ss. 2 and 3, *ante*.  
*Application.*—See, further, s. 102, *post*.

*Regulations.*—For the general provisions applicable to regulations under the Act, see s. 111, *post*. By sub-s. (5), *supra*, regulations made for the purposes of sub-s. (3), *supra*, are subject to the so-called "affirmative resolution procedure" to which ss. 4-7 of the Statutory Instruments Act, 1946 (39 Halsbury's Statutes 785 *et seq.*) do not apply.

*Having an interest in land.*—The Central Land Board have power to require information as to the ownership of land (s. 106, *post*).

*By a person who satisfies them, etc.*—Note, in connection with this provision, the terms of s. 43 (1), *ante*.

*Shall have regard.*—The Board are merely required to have regard to the increased value of the land due to the benefit of the planning permission; they are not bound to make the charge equivalent to the whole amount of the increased value of the land due to the benefit of the permission, nor as a general rule are they likely to do so.

*Undue or unreasonable preference or advantage.*—Thus the Board may give preference to one applicant over another, if they have good reasons for so doing. The Courts would not lightly interfere with their discretion in this matter.

Compare the Coal Industry Nationalisation Act, 1946, s. 1 (39 Halsbury's Statutes 256) ("avoidance of any undue or unreasonable preference or advantage"); and the Electricity Act, 1947, s. 37 (8), title ELECTRICITY SUPPLY, *ante* ("undue preference . . . undue discrimination").

*Shall be determined on different principles.*—By means of the regulations authorising a differential development charge, certain forms of development may be encouraged or discouraged. Thus, the powers relating to development charges may be used to exercise planning control additional to that authorised by Part III of the Act, *ante*.

*Definitions.*—As to "planning permission," see ss. 12, *ante*, and 119 (1), *post*; as to "local planning authority," see ss. 4, *ante*, and 119 (1), *post*. For definitions of "land" and "use," see s. 119 (1), *post*.

**71. Payment and security for payment of development charges.**—(1) The amount of the development charge payable under this Part of this Act in respect of the carrying out of any operations or in respect of any use of land may be determined either as a single capital payment or as a series of instalments of capital, or of capital and interest combined, or as a series of



other annual or periodical payments, of such amounts, and payable at such times, as the Central Land Board may determine after taking into account any representations made by the applicant. [2521]

(2) Except where the development charge is determined as aforesaid as a single capital payment which is then discharged, the Central Land Board may require the applicant—

- (a) to enter into such covenants as they may direct for the payment of any sums payable by virtue of the determination (whether with or without interest in default of due payment);
- (b) to give such security as they may direct (whether by way of a charge on the interest of the applicant in the land or otherwise) for the payment of any such sums as aforesaid :

Provided that notwithstanding anything in this section or in any requirement of the Board thereunder, any person for the time being interested in the land may at any time discharge any outstanding liability for sums payable by virtue of the determination by the payment of such amount as may be determined by the Board to represent the value of those sums subject to such discount as they consider appropriate. [2522]

(3) Where the amount of a development charge as determined by the Board has been discharged or any such requirement as aforesaid has been complied with, or where the Board determine that no such charge is to be paid, the Board shall, if so required by the applicant, issue their certificate to that effect. [2523]

(4) The purposes authorised for the application of capital moneys—

- (a) by section seventy-three of the Settled Land Act, 1925, and by that section as applied by section twenty-eight of the Law of Property Act, 1925, in relation to trusts for sale; and
- (b) by section twenty-six of the Universities and College Estates Act, 1925,

and the purposes authorised by section seventy-one of the Settled Land Act, 1925, by that section as applied as aforesaid, and by section thirty-one of the Universities and College Estates Act, 1925, as purposes for which moneys may be raised by mortgage, shall include the discharge of any sum payable in respect of a development charge under this Part of this Act, being a sum determined by the Board under this section as a capital payment or as an instalment of capital. [2524]

(5) Any sums received by the Central Land Board in respect of the payment of a development charge shall be paid into the Exchequer. [2525]

*General note.*—The Central Land Board is to have power, after considering anything the applicant has to say on the subject, to make a development charge payable (a) in a lump sum; (b) by instalments of capital, or capital and interest; or (c) by other annual or periodical payments. In addition, in either case (b) or (c) the Board may require covenants to pay or security, such as a charge on the land, or both.

Provision is made, however, for payment off of instalments or periodical payments at any time an owner chooses, and for the issue of "clearance certificates" (see *infra*). Capital money may be applied in the discharge of capital sums outstanding in respect of development charges.

*Central Land Board.*—See ss. 2 and 3, *ante*.

*Certificate.*—Where a person who has obtained planning permission and paid the development charge sells land with the benefit of the permission and payment, the purchaser should require production of the permission and the certificate. It will also be necessary to make inquiries of the local planning authority to make sure that the planning permission has not been revoked or modified. See, further, s. 72 (1), *post*, particularly the proviso.

*Settled Land Act, 1925, s. 73.*—17 Halsbury's Statutes 906. This is the section which sets out the ways in which capital money under that Act may be invested or otherwise applied.

*Law of Property Act, 1925, s. 28.*—15 Halsbury's Statutes 203. By this section trustees for sale are given all the powers of a tenant for life and the trustees of a settlement under the Settled Land Act, 1925 (17 Halsbury's Statutes 833).

*Universities and College Estates Act, 1925, s. 26.*—7 Halsbury's Statutes 100. This section sets out the purposes for which universities and colleges to which that Act applies may, with the consent of the Minister of Agriculture and Fisheries, apply capital money.

*Raising money by mortgage.*—The Settled Land Act, 1925, s. 71 (17 Halsbury's Statutes 903), authorises a tenant for life to raise money required for specified purposes on the security of the settled land by legal mortgage; the Law of Property Act, 1925, s. 28 (15 Halsbury's Statutes 203), applies this power to trustees for sale, and the Universities and College Estates Act, 1925, s. 31 (7 Halsbury's Statutes 104), describes the circumstances in which universities and colleges within that Act may raise money by mortgage of land belonging to them.

In each of these three cases, sub-s. (4), *ante*, brings the discharge of the capital of development charges within the ambit of the existing provisions.

*Definitions.*—For definitions of "use," "land" and "mortgage," see s. 119 (1), *post*.

**72. Scope and effect of determinations of Central Land Board.**—(1) Subject as hereinafter provided, a determination of the Central Land Board under this Part of this Act in respect of any operations or use of land shall have effect in relation to the carrying out of those operations, or, as the case may be, in relation to that use of the land, by any person for the time being interested therein and the question whether any and if so what development charge is to be paid under this Part of this Act in respect of any such operations or use shall be determined accordingly:

Provided that the Board may, if they think fit, direct that any such determination as aforesaid shall cease to have effect if, before the operations to which the determination relates are carried out or completed, or, as the case may be, before the use to which it relates is instituted, any interest in the land is transferred or created (otherwise than by operation of law), unless the determination is confirmed by the Board with or without modifications, on a subsequent application made to them in that behalf. [2526]

(2) Notwithstanding anything in the foregoing subsection, the amount of the development charge payable under this Part of this Act in respect of the use of land for any purpose may be determined in respect of the use of the land for that purpose during such period as may be specified in the determination:

Provided that—

(a) where planning permission for the institution or continuance of the use of land for any purpose has been granted under Part III of this Act for a limited period only, the amount of the said charge shall not be determined in respect of the use of the land for that purpose during any longer period; and

(b) where application is made to the Central Land Board to determine the amount of the said charge in respect of the use of the land for any purpose during any period specified in the application, the said amount shall not be so determined in respect of the use of the land for that purpose during any period longer than the period so specified. [2527]

(3) Where a determination of the Central Land Board is made, under the last foregoing subsection, in respect of the use of land for any purpose during a period specified in the determination, the provisions of this Part of this Act shall apply in relation to the use of the land for that purpose by any person after the expiration of that period as if the determination had not been made. [2528]

*General note.*—The proviso to sub-s. (1) of this section contains a highly important provision relating to the transfer of land.

Although planning permission may have been granted in respect of the use of land for a particular purpose unconditionally as regards the period for which the use may continue, the Central Land Board may determine the amount of the development charge for that purpose during such period as may be specified in the determination.

Where planning permission in respect of a use has been granted for a limited period, the amount of the charge must not be determined in respect of that use during any longer period.

An application may be made to the Central Land Board to determine the amount of the charge in respect of a use for a period specified in the application and in this case the Board must not determine the amount of the charge in respect of the use for any longer period than the period so specified.

If it is desired to continue the use beyond the period for which the charge has been determined, then a fresh application must be made to the Board to determine the amount of the charge.

*Central Land Board.*—For the constitution and functions of the Board, see ss. 2 and 3, *ante*.

*By operation of law.*—*E.g.* on death or bankruptcy.

*Definitions.*—As to "planning permission," see ss. 12, *ante*, and 119 (1), *post*; and as to "permission granted for a limited period only," see ss. 14, *ante*, and 119 (1), *post*. For definitions of "use" and "land," see s. 119 (1), *post*.

**73. Variation of determinations and repayment of development charges in certain cases.**—(1) The Central Land Board may at any time, on application made to them in that behalf in accordance with regulations under this Act by the person entitled to an interest in land to which a determination under this Part of this Act relates, vary their determination in such manner as appears to them to be appropriate having regard to any change of circumstances since the determination was made, including the development, after the determination, of adjacent land in accordance with planning permission granted otherwise than in accordance with the provisions of the development plan, and may amend, discharge or release any covenants or charges made or given in respect of the determination, or repay any sums previously paid thereunder, so far as may be required in order to give effect to the variation:

Provided that, except in a case where application is made to them to confirm a previous determination on the transfer or creation of any interest in land, the Board shall not have power to vary any determination under this Part of this Act so as to increase the amount of the development charge payable thereunder. [2529]

(2) Where, after the amount of the development charge has been determined under this Part of this Act in respect of any operations or in respect of any use of land, and before the amount so determined has been fully discharged—

- (a) planning permission for the carrying out of those operations or for the institution or continuance of that use is revoked by an order made under section twenty-one of this Act; or
- (b) an order is made under section twenty-six of this Act requiring the removal of any buildings or works erected or constructed in carrying out those operations, or requiring the discontinuance of that use; or
- (c) the whole of the land to which the determination relates is compulsorily acquired under this or any other Act,

the determination, and any covenants or charges made or given in respect thereof, shall thereupon cease to have effect, but without prejudice to the validity of anything previously done thereunder. [2530]

(3) Where, after the amount of the development charge has been determined as aforesaid, and before the amount so determined has been fully discharged,—

- (a) planning permission for the carrying out of the operations, or for the institution or continuance of the use, to which the determination relates, is modified by an order made under the said section twenty-one; or
- (b) an order is made under the said section twenty-six requiring the alteration of any buildings or works erected or constructed in the carrying out of those operations, or imposing conditions on the continuance of that use; or
- (c) any part of the land to which the determination relates is compulsorily acquired under this or any other Act,

the Board shall, on application made to them in accordance with regulations under this Act, vary the determination and amend, discharge or release any covenants or charges made or given in respect thereof, so far as may be just in consequence of the modification, order or purchase as the case may be.

(4) Where compensation is payable under Part III of this Act in consequence of any such order as mentioned in paragraph (a) or paragraph (b) of subsection (2) or subsection (3) of this section, then in calculating for the purposes of the compensation any depreciation in the value of the land to which the order relates, or any other loss or damage sustained by a person interested in that land, regard shall be had to the foregoing provisions of this section and to anything done by the Board thereunder. [2532]

(5) Where compensation is payable under the said Part III in consequence of any such order as aforesaid, or where land is compulsorily acquired as mentioned in paragraph (c) of subsection (2) or subsection (3) of this section, then if any sums have been paid to the Central Land Board by way of development charge in accordance with the determination referred to in those subsections, the Board shall pay to the authority or person by whom compensation is payable in consequence of the order or, as the case may be, in respect of the compulsory acquisition, a contribution towards that compensation representing such proportion of the sums so paid by way of development charge as may be agreed between the Board and that authority or person, or, failing agreement, as may be determined by the Minister, to be appropriate in all the circumstances of the case. [2533]

(6) Subsection (3) of section twenty-two of this Act shall apply for the purposes of this section as it applies for the purposes of that section, and shall accordingly have effect as if the reference therein to the foregoing provisions of that section included a reference to the foregoing provisions of this section; and any reference in this section to the compulsory acquisition of land shall be construed as including a reference to the acquisition of land by agreement by any authority or person who has power or can be authorised to acquire it compulsorily. [2534]

(7) Any sums required by the Central Land Board for the repayment of sums under this section, or for the making of contributions thereunder, shall be defrayed out of moneys provided by Parliament. [2535]

*Effect of section.*—This section enables the Central Land Board (1) to vary their determinations as to development charges, having regard to subsequent changes of circumstance; and (2) to amend or discharge covenants entered into or charges given and, where appropriate, to repay out of public funds any sums already paid. Such action is to be at the instance of persons interested in the land, and development charges payable can only be increased where the Board is asked to confirm an earlier determination on the transfer or creation of an interest in land.

By sub-ss. (2) and (3) provision is made for covenants or charges either to cease or to have effect or to be amended where particular events there specified have taken place after the date of the original determination.

Where compensation is payable under Part III of the Act, *ante*, first, sub-s. (4) provides that sub-ss. (1)–(3), *ante*, are to be taken into account in calculating the amount of the depreciation in value of the land; and secondly, sub-s. (5) provides for the payment by the Central Land Board of contributions towards the compensation payable.

*Central Land Board.*—See ss. 2 and 3, *ante*.

*Regulations under this Act.*—For the general provisions applicable, see s. 111, *post*.

*Adjacent land.*—See note to s. 5, *ante*, on the words “contiguous or adjacent.”

*Development plan.*—See Part II, *ante*.

*Compulsorily acquired.*—*E.g.* by Ministers, local authorities and statutory undertakers under s. 37, *ante*. Note the provision contained in sub-s. (8), *supra*, whereby references to compulsory acquisition in the present section are to include references to acquisition by agreement where compulsory powers exist. As to the acquisition of land by agreement for development purposes, see s. 40, *ante*.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Definitions.*—As to “planning permission,” see ss. 12, *ante*, and 119 (1), *post*. For definitions of “land,” “use” and “buildings or works,” see s. 119 (1), *post*.

**74. Powers of Central Land Board as to development carried out in contravention of Part VII.**—(1) If any operations to which this Part of this Act applies are carried out, or any use of land to which this Part of this Act applies is instituted or continued, in contravention of the foregoing provisions of this Part of this Act, the Central Land Board may, without any application being made to them in that behalf, by order determine whether any and if so what development charge is to be paid in respect of those operations or in respect of that use:

Provided that, subject to the following provisions of this section, the amount of the development charge so determined shall not exceed the amount which, in the opinion of the Board, would have been so determined if application had been duly made to them in that behalf under this Part of this Act. [2536]

(2) Any order made under this section may require the payment to the Board, by such persons as may be specified in the order (being persons by whom the operations were carried out, or by whom the use was instituted or continued, as the case may be), of such sums in respect of the charge and interest thereon as may be so specified, and may charge the interest of any person in the land with the payment of any sums so payable by that person or by any of his predecessors in title. [2537]

(3) Subject as hereinafter provided, the Central Land Board may, if it appears to them to be just so to do, include in the amount of the development charge determined by an order under this section such additional sum by way of penalty as they consider appropriate, not exceeding twice the amount of the development charge determined as aforesaid, and the provisions of subsection (2) of this section shall apply in relation to any such penalty as they apply in relation to the amount determined as aforesaid:

Provided that any person who is aggrieved by the inclusion of any such penalty in an order under this section may appeal to the appropriate court, and that court may, if they think fit, modify the order by omitting the penalty or by reducing the amount thereof to such extent as they consider appropriate. [2538]

(4) The provisions of this section shall apply in relation to any such operations or uses of land as are mentioned in subsection (1) of this section whether or not planning permission was granted in respect thereof under Part III of this Act; but where proceedings are taken under section twenty-three of this Act for the enforcement of planning control in relation to any such operations or use, regard shall be had to those proceedings in determining the amount of the development charge under this section. [2539]

(5) A charge on land created by virtue of an order under this section shall be deemed to be a land charge of Class A within the meaning of the Land Charges Act, 1925, and the Board shall, for the purposes of enforcing it, have the same powers and remedies under the Law of Property Act, 1925, and otherwise as they would have if they were mortgagees by deed having powers of sale and lease and of appointing a receiver. [2540]

(6) For the purposes of subsection (3) of this section, the expression "the appropriate court" means, in relation to a penalty exceeding five hundred pounds, the High Court, and in relation to any other penalty, the county court for the district in which the land or any part thereof is situated. [2541]

*General note.*—This section empowers the Central Land Board to deal with cases where development is carried out in contravention of this Part of the Act. Note, in particular, the power to impose a penalty not exceeding twice the amount of the development charge. There is a right of appeal to the High Court where the amount of the penalty exceeds five hundred pounds, and in relation to any other penalty, to the county court.

Where there has been failure to obtain planning permission also, and enforcement proceedings have been taken under Part III, *ante*, the Board must have regard to those proceedings in determining the amount of the development charge under this section (sub-s. (4), *supra*). If the enforcement proceedings result in prohibition of the development, presumably no charge will be made. If no charge is made, there can be no penalty.

Attention is particularly drawn to s. 75 (8), *post*, which relates to works carried out or uses begun in contravention of previous planning control before July 1, 1948.

*Central Land Board.*—For the constitution and functions of the Board, see ss. 2 and 3, *ante*.

*Appeal to the appropriate court.*—On appeal the court "may, if they think fit, modify the order by omitting the penalty or by reducing the amount thereof to such extent as they consider appropriate." The inference is that if they do not "think fit" to take either of these courses, the court may dismiss the appeal. Note that there is no express provision whereby the appeal court can make any order that was open to the tribunal of first instance.

*Land charge of Class A.*—S. 10 (1) of the Land Charges Act, 1925 (15 Halsbury's Statutes

531), lays down the classes of charges on or obligations affecting land which may be registered as land charges in the register of land charges. Of these Class A comprises :—

“ A rent, or annuity, or principal money payable by instalments or otherwise, with or without interest, being a charge (otherwise than by deed) upon land created pursuant to the application of some person either before or after the commencement of this Act— ”

Then follow references to the relevant statutory provisions. Charges on land created by virtue of orders under the present section are now to be deemed within these provisions.

The official responsible for the register of land charges is the Land Charges Superintendent, whose address is H.M. Land Registry, Lincoln's Inn Fields, London, W.C.2 (Telephone HOLborn 8232).

*Law of Property Act, 1925.*—15 Halsbury's Statutes 177. For the statutory powers and remedies of mortgagees by deed in relation to sale, leasing and appointing a receiver, see ss. 99, 101 and 103–107 thereof (15 Halsbury's Statutes 277, 283, 286–290).

*Definitions.*—As to “ planning permission,” see ss. 12, *ante*, and 119 (1), *post*. For definitions of “ use ” and “ land,” see s. 119 (1), *post*.

## PART VIII

### APPLICATION TO SPECIAL CASES

#### 75. Existing development contravening previous planning control.—

(1) Where any works on land existing at the appointed day were carried out, or any use to which land is put on that day was begun, in contravention of previous planning control, then, subject to the provisions of this section, the provisions of Part III of this Act with respect to enforcement notices shall apply in relation thereto as they apply in relation to development carried out after the appointed day without the grant of permission in that behalf under the said Part III :

Provided that an enforcement notice shall not be served by virtue of the provisions of this section in respect of any works or use (not being works or a use carried out or begun during the war period as defined by the Building Restrictions (War-Time Contraventions) Act, 1946) at any time after three years from the appointed day. [2542]

(2) Where any such works as aforesaid were carried out, or any such use as aforesaid was begun, during the war period as defined by the Building Restrictions (War-Time Contraventions) Act, 1946, then—

(a) if by virtue of the provisions of that Act, or of any determination effected thereunder (whether before or after the appointed day), the works or use are deemed to comply with planning control within the meaning of that Act, the provisions of this section shall not apply, or, as the case may be, shall cease to apply to those works or that use ; and

(b) if it has been determined under that Act (whether before or after the appointed day) that the works or use shall not be deemed to comply with planning control within the meaning of that Act, subsection (3) of section twenty-three of this Act shall have effect, in relation to any enforcement notice served in respect of the works or use by virtue of the provisions of this section, as if the proviso to that subsection were omitted. [2543]

(3) Where, by virtue of this section, an enforcement notice is served in respect of any works being government war works within the meaning of the Requisitioned Land and War Works Act, 1945, then, subject as herein-after provided—

(a) if the steps required by the notice are taken by the owner or occupier of the land, any expenses reasonably incurred in that behalf shall be recoverable from the authority by whom the notice was served ;

(b) if the steps required by the notice are taken by the said authority, that authority shall not be entitled, under section twenty-four of this Act, to recover the expenses incurred by them in that behalf :

Provided that where, under paragraph (b) of subsection (1) of section



two of the Compensation (Defence) Act, 1939, compensation has been paid equal to the full cost (as estimated for the purposes of that compensation) of taking the steps required by the enforcement notice, the foregoing provisions of this subsection shall not apply; and where compensation has been paid under the said paragraph (b) (otherwise than as aforesaid), or under subsection (4) of section three of the said Act, in respect of the land, the amount which, by virtue of this subsection, is recoverable from the authority by whom the enforcement notice was served or, as the case may be, is not recoverable by that authority, shall be reduced so far as may be just having regard to the compensation so paid. [2544]

(4) The power of the local planning authority under Part III of this Act to grant permission for the retention on land of buildings or works constructed or carried out before the date of application, or for the continuance of any use of land instituted before that date, shall include power to grant such permission in respect of any buildings or other works or use of land in respect of which that authority are empowered to serve an enforcement notice by virtue of the provisions of this section; and where permission is so granted, the foregoing provisions of this section shall cease to apply to the works or use to which the permission relates, but without prejudice to the application thereto of any provisions of the said Part III with respect to the contravention of conditions subject to which permission for development has been granted thereunder. [2545]

(5) In relation to an enforcement notice served by virtue of this section, subsection (4) of section twenty-three of this Act shall have effect as if for paragraph (a) thereof there were substituted the following paragraph:—

“(a) if satisfied that the works or use to which the notice relates are not works or a use to which section seventy-five of this Act applies, shall quash the notice to which the appeal relates”. [2546]

(6) Where an enforcement notice served by virtue of this section in relation to any land takes effect—

(a) the value of any interest therein for the purposes of the assessment of the compensation payable under Part V of this Act on the compulsory acquisition thereof; and

(b) the development value of any interest therein for the purposes of Part VI of this Act

shall be calculated having regard to the requirements of the notice, and the assumptions required to be made for those purposes shall be modified accordingly. [2547]

(7) Where, under Part III of this Act, planning permission is granted for the continuance of any such use as is mentioned in subsection (1) of this section, then, notwithstanding anything in subsection (2) of section sixty-nine of this Act, no development charge shall be payable under Part VII of this Act in respect of the continued use of the land, in accordance with permission so granted. [2548]

(8) Provision may be made by regulations under this Act for applying the foregoing provisions of this section, subject to such adaptations and modifications as may be specified in the regulations, to works on land carried out, or uses of land begun, at any time before the appointed day, in contravention of any restriction in force under any enactment repealed by this Act (other than the enactments relating to town and country planning); and any such regulations may make such consequential provisions as the Minister considers expedient, including provision for amending the Building Restrictions (War-Time Contraventions) Act, 1946, in its application to any such restriction as aforesaid:

Provided that where provision is made by such regulations for amending



the said Act of 1946, the regulations shall be of no effect unless they are approved by resolution of each House of Parliament. [2549]

(9) For the purposes of this section, works on land shall be deemed to have been carried out, and uses of land to have been begun, in contravention of previous planning control—

- (a) where at the material time the land was subject to a resolution to prepare a planning scheme, if carried out or begun otherwise than in accordance with permission granted in that behalf by or under the interim development order ;
- (b) where at the material time the land was subject to a planning scheme, if carried out or begun otherwise than in conformity with the provisions of the scheme or of permission granted thereunder ;

and where permission for any works or use was granted as aforesaid subject to conditions (in whatever form) restricting the period during which the works or use could be continued on the land, and that period has expired before the appointed day, the provisions of this section shall apply as if the works or use had been carried out or begun in contravention of previous planning control. [2550]

*General note.*—Under the 1932 Act (25 Halsbury's Statutes 470) if a person carried out development after the "material date" (i.e. the date on which the land became subject to an operative resolution to prepare a planning scheme) without obtaining interim development permission (equivalent to planning permission under the present Act), he did so at his peril. No action could be taken against him until the scheme came into operation, but if, when it came into operation, the development contravened the provisions of the scheme, enforcing action could be taken under s. 13 of the 1932 Act (25 Halsbury's Statutes 486) without payment of compensation for any loss that such action might inflict on the owner.

The 1943 Act (36 Halsbury's Statutes 239) strengthened the powers of interim development authorities by empowering them to take immediate action with respect to development carried out without interim development permission. This Act also brought all land in England and Wales, not hitherto subject to planning control of any kind, under interim development control as from October 22, 1943.

Relatively very few schemes under the 1932 Act have actually come into operation, with the result that there remains much existing development which had been carried out, even after the material date, without interim development permission.

As from the appointed day local authorities are empowered by this section to enforce planning control with respect to such development under Part III of the Act ; the position is practically the same as it would have been when the scheme finally came into operation. Instead of the scheme bringing the day of reckoning, the Minister brought it when he fixed July 1, 1948, as the "appointed day" under this Act.

Note, however, the provision contained in sub-s. (4), *ante*, which enables application to be made for planning permission in respect of existing development which contravenes previous planning control.

*Appointed day.*—This means such day as the Minister of Town and Country Planning may by order appoint (ss. 119 (1) and 120 (1), *post*). July 1, 1948, has been so appointed (S.I. 1948 No. 213).

*Service of enforcement notices.*—See ss. 23, *ante*, and 105, *post*.

*Building Restrictions (War-Time Contraventions) Act, 1946.*—39 Halsbury's Statutes 899.

*Requisitioned Land and War Works Act, 1945.*—38 Halsbury's Statutes 582. By s. 59 (1) of that Act (38 Halsbury's Statutes 623), "government war works" are defined as "works constructed in the course of government war work," the last term being itself defined as "work done during the war period for war purposes by or by arrangement with a Minister or under emergency powers."

*Compensation (Defence) Act, 1939.*—32 Halsbury's Statutes 1013. For ss. 2 (1) (b) and 3 (4) of that Act, see 32 Halsbury's Statutes 1016, 1018.

*Development value.*—The difference between the unrestricted value of the land and its restricted value in each case as at the appointed day (see s. 61 (1), *ante*).

*Sub-s. (7).*—Note that the exemption from payment of a development charge is only in respect of a use, and does not extend to works.

*Regulations.*—For the general provisions applicable to regulations under the Act, see s. 111, *post*. Note that by virtue of sub-s. (8), *ante*, regulations may amend the Building Restrictions (War-Time Contraventions) Act, 1946 (see *supra*), but in such case affirmative resolutions of both Houses are required to bring the regulations into effect. To such regulations ss. 4-7 of the Statutory Instruments Act, 1946 (39 Halsbury's Statutes 785 *et seq.*), do not apply.

*Enactment repealed by this Act.*—See ss. 113, 120 and Sched. IX, *post*.

*Planning scheme.*—This means a scheme under the Act of 1932 (25 Halsbury's Statutes 470) or any enactment repealed by that Act (s. 119 (1), *post*).

*Interim development order.*—This means an order made under s. 10 (1) of the Act of 1932 ; 25 Halsbury's Statutes 482 (s. 119 (1), *post*).

*Definitions.*—As to “enforcement notice,” see s. 23 (2), *ante*; as to “development” and “planning permission,” see ss. 12, *ante*, and 119 (1), *post*; as to “local planning authority,” see ss. 4, *ante*, and 119 (1), *post*. For definitions of “land,” “appointed day,” “use,” “owner,” “buildings or works,” “enactment” and “Act of 1932,” see s. 119 (1), *post*. Other definitions are mentioned *ante*.

**76. Existing development authorised subject to conditions.**—(1) Where any works on land existing at the appointed day, or any use to which land is put on that day, has been authorised by a permission granted subject to conditions under a planning scheme or under an interim development order, the provisions of Part III of this Act shall apply in relation to those works or that use as if the conditions had been imposed on the grant of planning permission under the said Part III. [2551]

(2) Without prejudice to the generality of the foregoing subsection, where any such permission as aforesaid was granted subject to conditions (in whatever form) restricting the period for which the works or use may be continued on the land, then, if that period has not expired at the appointed day and the works are not removed, or the use discontinued, at the expiration of that period, the provisions of Part III of this Act with respect to enforcement notices shall apply in relation thereto as if the works had been carried out, or the use begun, as the case may be, at the expiration of that period and without the grant of permission in that behalf under the said Part III. [2552]

(3) The power of a local planning authority under Part III of this Act to grant permission for the retention on land of buildings or works constructed or carried out before the date of the application, or the continuance of any use of land instituted before that date, shall include power to grant such permission in respect of any works or use authorised by a permission granted subject to any such conditions as are mentioned in the last foregoing subsection; and where permission is so granted—

(a) the last foregoing subsection shall cease to apply to the works or use to which the permission relates, but without prejudice to the application thereto of any provisions of the said Part III with respect to the contravention of conditions subject to which permission for development has been granted thereunder;

(b) in a case where the permission authorises the retention of any works, subsection (4) of section sixty-nine of this Act shall apply in relation to the retention of those works as if they had been erected or carried out in accordance with planning permission granted for a limited period only. [2553]

(4) The value of any interest in land to which any such permission as is mentioned in subsection (1) of this section relates for the purposes of the assessment of compensation payable under Part V of this Act on the compulsory acquisition thereof, and the development value of any such interest for the purposes of Part VI of this Act, shall be calculated having regard to the conditions subject to which the permission was granted and to the provisions of this section, and the assumptions required to be made for those purposes shall be modified accordingly. [2554]

(5) Where at any time before the appointed day, it has been determined under the Building Restrictions (War-time Contraventions) Act, 1946, that any works on land or any use of land shall be deemed to comply with planning control within the meaning of that Act subject to any conditions specified in the determination, the provisions of this section shall apply in relation to those works or that use, and in relation to any interest in the land in question, as if the said conditions had been imposed on the grant of permission under a planning scheme or under an interim development order; and notwithstanding any breach of those conditions, the provisions of the last foregoing section shall not apply thereto. [2555]

(6) Provision may be made by regulations under this Act for applying the foregoing provisions of this section, subject to such adaptations and modifications as may be specified in the regulations, to works on land carried out, or uses of land begun, at any time before the appointed day, in accordance with permission granted subject to conditions under any enactment repealed by this Act (other than the enactments relating to town and country planning); and for the purposes of this provision any works or use in respect of which a notice has been served under subsection (1) of section one of the Restriction of Ribbon Development (Temporary Development) Act, 1943, or is deemed by virtue of subsection (4) of that section to have been so served, shall be treated as carried out or begun in accordance with permission granted subject to a condition restricting the period for which the works or use may be continued on the land. [2556]

*General note.*—S. 75, *ante*, dealt, *inter alia*, with cases where permission for works or use had been granted for a limited period and that period had expired before the appointed day. The present section proceeds to deal with cases where permission had been granted for a limited period and that period had not expired at the appointed day, July 1, 1948.

Permission may be granted for the retention of works or use, but works retained are specifically made subject to a development charge.

*Appointed day.*—This means such day as the Minister of Town and Country Planning may by order appoint (ss. 119 (1) and 120 (1), *post*). July 1, 1948, has been so appointed (S.I. 1948 No. 213).

*Development value.*—The difference between the unrestricted value of the land and its restricted value, in each case as at the appointed day (see s. 61 (1), *ante*).

*Building Restrictions (War-Time Contraventions) Act, 1946.*—39 Halsbury's Statutes 899.

*Regulations.*—For the general provisions applicable to regulations under the Act, see s. 111, *post*. Note that there is no provision in sub-s. (6), *supra*, as there is in s. 75 (8), *ante*, for certain limited circumstances, requiring affirmative resolutions of both Houses for bringing the regulations into force.

*Enactment repealed by this Act.*—See ss. 113, 120 and Sched. IX, *post*.

*Restriction of Ribbon Development (Temporary Development) Act, 1943.*—36 Halsbury's Statutes 130. For s. 1 (1), (4), thereof, see 36 Halsbury's Statutes 131, 132.

*Definitions.*—As to "planning permission" and "development," see ss. 12, *ante*, and 119 (1), *post*; as to "enforcement notice," see s. 23 (2), *ante*; as to "local planning authority," see ss. 4, *ante*, and 119 (1), *post*; and as to "permission granted for a limited period only," see ss. 14, *ante*, and 119 (1), *post*. For definitions of "land," "use," "planning scheme," "interim development order," "buildings or works" and "enactment," see s. 119 (1), *post*.

**77. General provisions as to development authorised under interim development orders after 21st July, 1943.**—(1) Where permission for any development of land has been granted, at any time after the twenty-first day of July, nineteen hundred and forty-three, and before the appointed day, on an application in that behalf made under an interim development order, then if and so far as that development has not been carried out before the appointed day and the permission granted as aforesaid is in force immediately before that day, planning permission shall be deemed by virtue of this section to be granted in respect thereof under Part III of this Act, subject to the like conditions, if any, as were imposed by the permission under the interim development order as in force as aforesaid:

Provided that this subsection shall not apply in relation to any development for which permission was required before the appointed day under the Restriction of Ribbon Development Act, 1935, unless that permission has also been granted. [2557]

(2) Subject to the provisions of the next following section, in any case to which those provisions apply, no account shall be taken of the provisions of this section in calculating for the purposes of Part VI of this Act the development value of any interest in land for the development of which permission is deemed to be granted by virtue of this section; and nothing in this section shall be construed as affecting the operation of Part VII of this Act in relation to any development in respect of which permission is deemed to be so granted. [2558]

(3) The provisions of section twenty-one of this Act shall apply in relation to permission which is deemed to be granted by virtue of this section as if it

had been granted on an application made in that behalf under Part III of this Act, and in relation to any order made under that section for the revocation or modification of any such permission any reference in subsection (2) of section twenty-two of this Act to the grant of permission shall be construed as a reference to the grant of the permission under the interim development order. [2559]

(4) Where permission for any development of land has been granted as mentioned in subsection (1) of this section, and permission for that development has also been granted under the Restriction of Ribbon Development Act, 1935, then if the permission so granted under the said Act of 1935 was granted subject to conditions, those conditions shall be treated for the purposes of this section as conditions imposed by the permission granted under the interim development order. [2560]

*General note.*—Any interim development permission granted since the 1943 Act (36 Halsbury's Statutes 239) came into operation will carry over under the present Act; but the permission will be disregarded for the purpose of calculating the development value, and a development charge will be payable where the development is not carried out until after the appointed day, July 1, 1948.

As to buildings which have been begun but which are unfinished at the appointed day, see s. 78, *infra*.

*After July 21, 1943.*—*I.e.* after the 1943 Act (36 Halsbury's Statutes 239) came into operation. That Act received the Royal Assent and came into force on July 22, 1943.

*Appointed day.*—See ss. 119 and 120, *post*. July 1, 1948, has been appointed the day in question (S.I. 1948, No. 213).

*Restriction of Ribbon Development Act, 1935.*—28 Halsbury's Statutes 275.

*Development value.*—The difference between the unrestricted value of the land and its restricted value in each case as at the appointed day (see s. 61 (1), *ante*).

S. 21.—See *ante*. This section re-enacts the provisions of s. 4 of the 1943 Act (36 Halsbury's Statutes 244). Interim development consents granted since the 1943 Act came into operation must be specifically revoked. Other consents, whether under interim development before the 1943 Act came into operation or under schemes at any time, are revoked by the present Act and further applications for consent must be made after the appointed day unless the provisions of s. 78, *infra*, apply.

*Definitions.*—As to "development" and "planning permission," see ss. 12, *ante*, and 119 (1), *post*. For definitions of "land" and "interim development order," see s. 119 (1), *post*.

**78. Unfinished buildings.**—(1) Subject to the provisions of this section, where any works for the erection or alteration of a building have been begun but not completed before the appointed day, then if immediately before that day those works could have been completed in conformity with the provisions of a planning scheme or of permission granted thereunder, or in accordance with permission granted by or under an interim development order, and if any permission required under the Restriction of Ribbon Development Act, 1935, for the carrying out of those works was granted, planning permission shall, by virtue of this section, be deemed to be granted under Part III of this Act in respect of the completion of those works. [2561]

(2) The permission deemed to be granted by virtue of this section shall be deemed to be so granted subject to any conditions applicable thereto by or under the scheme or the permission granted by or under the interim development order, as the case may be, and to any conditions imposed by the permission granted under the Restriction of Ribbon Development Act, 1935, and shall include permission to use the building when erected or altered—

(a) where the purpose for which it could be so used was prescribed by or under the planning scheme, or by the permission granted by or under the interim development order, as the case may be, for that purpose;

(b) in any other case, for the purpose for which the building, or the building as altered, is designed. [2562]

(3) The development value of land for the development of which permission is deemed to be granted by virtue of this section shall be calculated for the purposes of Part VI of this Act as if that development had been completed immediately before the appointed day, and no development charge

shall be payable under Part VII of this Act in connection with that development. [2563]

(4) In relation to any such works as are mentioned in subsection (1) of this section, being works in respect of which permission was granted after the twenty-first day of July, nineteen hundred and forty-three, on an application in that behalf made under an interim development order, the provisions of this section shall have effect in substitution for the provisions of the last foregoing section. [2564]

*General note.*—Buildings which have been begun in accordance with planning control and which are not yet completed at the appointed day are, in effect, to be deemed to have been completed before the appointed day, which is July 1, 1948.

There is no need to apply for any further consent, no matter whether the original permission was before or after the 1943 Act (36 Halsbury's Statutes 239) came into operation; and no development charge will be levied on the development.

Attention must, however, be drawn to the words: "if immediately before that day those works could have been completed. . . ." These words would appear to distinguish the circumstances contemplated in this section from the circumstances in contemplation of the preceding and succeeding sections. In effect, the works must actually be capable of completion lawfully at the appointed day.

*Appointed day.*—See ss. 119 and 120, *post*. July 1, 1948, has been appointed the day in question (S.I. 1948 No. 213).

*Restriction of Ribbon Development Act, 1935.*—28 Halsbury's Statutes 275.

*Development value.*—The difference between the unrestricted value of the land and its restricted value in each case as at the appointed day (see s. 61 (1), *ante*).

*Development charge.*—See ss. 69 *et seq.*, *ante*.

*After July 21, 1943.*—*I.e.* after the 1943 Act (36 Halsbury's Statutes 239) came into operation. That Act received the Royal Assent and came into force on July 22, 1943.

*Definitions.*—As to "planning permission" and "development," see ss. 12, *ante*, and 119 (1), *post*. For definitions of "erection," "building," "planning scheme," "interim development order" and "land," see s. 119 (1), *post*.

**79. Compensation for abortive expenditure on refusal of permission for other development authorised before appointed day.**—(1) Where an application is made under Part III of this Act within six months after the appointed day for permission to complete or carry out any buildings or works begun or contracted for before that day, and that permission is refused by the Minister, either on appeal or on the reference of the application to him for determination, or is so granted by the Minister subject to conditions, then if, on a claim made to the local planning authority within the time and in the manner prescribed by regulations under this Act, it is shown—

- (a) that the buildings or works in question were begun or contracted for in conformity with the provisions of a planning scheme or of permission granted thereunder, or in accordance with permission granted, at any time before the twenty-second day of July, nineteen hundred and forty-three, by or under an interim development order; or
- (b) that the buildings or works in question were begun or contracted for at a time when no resolution to prepare or adopt such a scheme had taken effect; and
- (c) that the applicant has incurred expenditure in carrying out work which is rendered abortive by the refusal or conditions, or has entered into a contract for any work which is abandoned in consequence thereof,

that authority shall pay to the applicant compensation equal to the expenditure so incurred or, as the case may be, to any sum reasonably paid by him in the discharge of any liability arising under the contract in respect of the abandonment of the work. [2565]

(2) For the purposes of the last foregoing subsection, any expenditure incurred in the preparation of plans for the purposes of any work or upon any similar matters preparatory thereto shall be deemed to be included in the expenditure incurred in carrying out that work, but except as aforesaid no compensation shall be paid under the said subsection in respect of anything done for the purposes of any such buildings or works as are mentioned in

paragraph (a) of subsection (1) of this section if it was done before the following date, that is to say—

(a) where the building or work was authorised by permission granted under a planning scheme or by or under an interim development order, the date on which permission was so granted;

(b) where the building or work was otherwise begun or contracted for in conformity with a planning scheme, the date on which that scheme came into force. [2566]

(3) Any compensation payable under this section in respect of an interest in land shall be payable in addition to any compensation payable under Part III of this Act in respect of that interest in consequence of the refusal of the permission or the grant thereof subject to conditions:

Provided that no account shall be taken, in assessing the compensation payable as aforesaid under the said Part III (whether in respect of the compulsory acquisition of the said interest or otherwise), of the value of any works in respect of which compensation is payable under this section. [2567]

(4) The reference in subsection (3) of section thirty-four of this Act to compensation under Part III of this Act shall be construed as including a reference to compensation payable under this section. [2568]

*General note.*—This section deals with consents which antedate the 1943 Act (36 Halsbury's Statutes 239), or which are under scheme control, or which relate to development begun or contracted for before a resolution to plan. All such consents or authority to develop are revoked by the present Act and fresh consent must be obtained.

If such consent is either refused by the Minister or granted by him subject to conditions, compensation is payable for expenditure on development which is rendered abortive. It should be noted that compensation is only payable where an application is turned down or conditions are imposed by the Minister, and the application must be made within *six months* after the appointed day.

*Appointed day.*—See ss. 119 and 120, *post*. July 1, 1948, has been appointed the day in question (S.I. 1948 No. 213).

*Begun.*—Contrast the use of this word with the use of the same word in the preceding section. In s. 78, *ante*, the expression used is "begun but not completed."

It would appear that if the buildings could lawfully be completed (except those dealt with under sub-s. (1) (c), *ante*), they may be continued without further application for consent; but that if something other than the coming into operation of the Act made impossible the completion of the works immediately before the appointed day, a further application for consent must be made.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Regulations.*—For the general provisions applicable to regulations under the Act, see s. 111, *post*.

*Before July 22, 1943.*—*I.e.* before the 1943 Act (36 Halsbury's Statutes 239) came into operation. That Act received the Royal Assent and came into force on that date.

*Definitions.*—As to "local planning authority," see ss. 4, *ante*, and 119 (1), *post*. For definitions of "buildings or works," "planning scheme," "interim development order" and "land," see s. 119 (1), *post*.

**80. Land ripe for development before the appointed day.**—(1) Where planning permission is granted under Part III of this Act in respect of any development consisting of the erection, extension or alteration of buildings, or is deemed by virtue of section seventy-seven of this Act to be so granted, then if the Minister is satisfied, on application made to him within one year after the appointed day or within such extended period as the Minister may in any particular case allow—

(a) that the development values of interests in the land, as required to be ascertained in accordance with the provisions of Part VI of this Act and without regard to the provisions of this section would be wholly or mainly attributable to the prospects of that development at the appointed day; and

(b) that a building contract made in relation to that development within the period of ten years before the seventh day of January, nineteen hundred and forty-seven, was in force on the appointed day, or that a byelaw submission or a building application had been made in respect thereof within that period,

he shall certify accordingly:



Provided that if it appears to the Minister that proceedings should be taken with a view to the revocation of the permission granted or deemed to be granted as aforesaid, he may postpone the issue of a certificate pending the taking of such proceedings, and if the permission is revoked he shall not be required to issue the certificate. [2569]

(2) Where a certificate is issued under this section, then—

- (a) in calculating for the purpose of Part VI of this Act the development value of any interest in the land to which the certificate relates, no account shall be taken of any value attributable to the prospects of the development specified in the certificate; and
- (b) no development charge shall be payable under Part VII of this Act in respect of that development if carried out within such period, if any, as may be prescribed by the certificate. [2570]

(3) For the purposes of this section

- (a) the expression “building contract”, in relation to any development, means a contract made between a person for the time being interested in the land and any other person, under which that other person undertakes to carry out the whole or substantially the whole of the building operations to be carried out in the course of that development;
- (b) the expression “byelaw submission”, in relation to any development, means the submission by a person for the time being interested in the land of plans of the buildings proposed to be erected, extended or altered in the course of the development to the proper local or other authority in order to comply with the requirements of any byelaws or other enactment requiring plans to be so submitted, and
- (c) the expression “building application” in relation to any development means an application including such plans as aforesaid and made by any such person as aforesaid to a local or other authority under the Town and Country Planning Acts, 1932 and 1943, or under any byelaws or other enactment requiring the consent of that authority to be obtained for the construction, extension or alteration of buildings. [2571]

*General note.*—Certain limited classes of land will qualify as “dead ripe” land, and will be excluded from the development value provisions and from liability to pay a development charge. Buildings in course of completion will escape under the provisions of s. 78, *ante*. Certain other land will escape if the Minister certifies:—

(a) that the development value is attributable to the prospect of development at the appointed day; and

(b) that a building contract in relation to the development made between January 7, 1937, and January 7, 1947, is in force on the appointed day, or that an application for byelaw or planning consent has been made in respect of the development between the same dates, provided that such application has been accompanied by plans sufficient to support a byelaw application.

A planning application accompanied by a lay-out plan will not be sufficient to earn the Minister's certificate. Application for the Minister's certificate is to be made within twelve months of the appointed day or such longer period as the Minister may allow. This section will apply to cases where permission is given under Part III, *ante*, or where permission is deemed to have been given under s. 77, *ante*.

Note the definitions in sub-s. (3), *supra*, of “building contract,” “byelaw submission” and “building application.”

*Planning permission.*—See ss. 12–20, *ante*.

S. 77.—See *ante*. This section provides for the carry-over of interim development consents granted since July 21, 1943.

*If the Minister is satisfied.*—See note to s. 4, *ante*, on the words “If it appears to the Minister.”

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Appointed day.*—This means such day as the Minister of Town and Country Planning may by order appoint (ss. 119 (1) and 120 (1), *post*). July 1, 1948, has been so appointed (S.I. 1948 No. 213).

*Development values.*—The difference between the unrestricted values of the lands and their restricted values, in each case as at the appointed day (see s. 61 (1), *ante*).

*Before January 7, 1947.*—*I.e.* before the text of the Bill was made known to the public.



*Byelaw submission or building application.*—Note that while the byelaw submission or building application may be sufficient to earn the Minister's certificate under this section it will not carry planning consent if before July 22, 1943. Any consent granted before the 1943 Act (36 Halsbury's Statutes 239) should be the subject of a further application within six months of the appointed day to ensure the retention of the right to compensation for abortive expenditure under s. 79, *ante*.

*If it appears to the Minister.*—See note to s. 4, *ante*.

*Development charge.*—See ss. 69 *et seq.*, *ante*.

*Town and Country Planning Acts, 1932 and 1943.*—25 Halsbury's Statutes 470; 36 Halsbury's Statutes 239.

*Definitions.*—As to "development" and "planning permission," see ss. 12, *ante*, and 119 (1), *post*. For definitions of "erection," "building," "land," "building operations," "local authority" and "enactment," see s. 119 (1), *post*.

**81. Mineral workings.**—(1) In relation to development consisting of the winning and working of minerals, the provisions of this Act shall have effect subject to such adaptations and modifications as may be prescribed by regulations made under this Act with the consent of the Treasury. [2572]

(2) Without prejudice to the generality of the foregoing provision, any such regulations as aforesaid may provide for securing—

- (a) that in the case of such land as may be prescribed by or under the regulations, no development charge shall be payable under Part VII of this Act in respect of the winning and working of any minerals in the land during a period of three years after the appointed day;
- (b) that the restricted and the unrestricted values of any interest in such land as is mentioned in the foregoing paragraph shall be calculated for the purposes of Part VI of this Act as if any operations carried out for the winning and working of minerals during the said period of three years had been carried out before the appointed day;
- (c) that the amount of any development charge payable under Part VII of this Act in respect of the winning and working of minerals in accordance with planning permission granted or deemed to have been granted under Part III of this Act shall be calculated by reference to the amount of minerals got from time to time in accordance with such permission. [2573]

(3) Regulations made for the purposes of this section shall provide for securing—

- (a) that where a development charge is payable under Part VII of this Act in respect of the winning and working of minerals comprised in a mining lease which was in force on the appointed day, the royalty or other payment required to be made under the lease may be varied, by such tribunal as may be prescribed by the regulations, so far as may be just having regard to the amount of the charge;
- (b) that where a development charge is payable under the said Part VII in respect of the winning and working of minerals authorised by an order made under Part I of the Mines (Working Facilities and Support) Act, 1923, the provisions of the order may be varied by the Railway and Canal Commission so far as may be just having regard to the amount of the charge. [2574]

(4) Where a development plan provides that any land is to be used for the purposes of securing the winning and working of any minerals comprised therein, then, without prejudice to the powers conferred by Part IV of this Act in relation to land designated by such a plan as subject to compulsory acquisition, the provisions of the Mines (Working Facilities and Support) Act, 1923, shall have effect in relation to the land subject to such modifications as may be prescribed by regulations made under this Act by the Minister and

the Minister of Fuel and Power, and such regulations may in particular provide for securing—

- (a) that a right to work any minerals in the land may be granted by the Railway and Canal Commission under the said Act to any person who is desirous of working them, either by himself or through his lessees, and who is unable to obtain the necessary rights by agreement on reasonable terms ;
  - (b) that for the purposes of the determination by the Commission of an application for any such right, it shall be assumed that the winning and working of the minerals is expedient in the national interest ; and
  - (c) that the compensation or consideration in respect of any such right which is granted by the Commission shall be assessed having regard to the amount of the compensation which would be payable in respect of a compulsory acquisition of the minerals under Part IV of this Act. [2575]
- (5) Regulations made for the purposes of this section shall be of no effect unless they are approved by resolution of each House of Parliament. [2576]
- (6) The provisions of this section and of any regulations made thereunder shall not apply to the winning and working of any such minerals as are mentioned in paragraph 5 of the Third Schedule to this Act, or to the winning and working of any minerals vested in the National Coal Board, and nothing in this section shall be construed as affecting the prerogative right of His Majesty (whether in right of the Crown or of the Duchy of Lancaster) or of the Duke of Cornwall to any gold or silver mine. [2577]

*General note.*—The working of minerals is covered by the definition of “development” contained in s. 12, *ante*, and the present section provides for the application of the provisions of the Act to such workings.

A moratorium is given to any workings in the period of three years from the appointed day in respect of the levy of development charges. When, however, the development charge is levied, it may be calculated on a royalty basis. In the light of any development charge imposed, any existing lease may be varied so far as royalty, etc., is concerned. So may the provisions of any Mines (Working Facilities) Order.

Where mineral development is impeded by the refusal of any owner to grant a mining lease and the minerals are zoned for working in the development plan, the right to work may be granted by the Railway and Canal Commission under the Mines (Working Facilities and Support) Act, 1923 (12 Halsbury's Statutes 181).

As to the share which may be expected to be obtained by mineral owners out of the global sum of £300,000,000 under s. 58, *ante*, see 441 H. of C. Official Report 911.

*Winning and working of minerals.*—This term includes both underground and surface workings by virtue of the definition of “minerals” in s. 119 (1), *post*.

The scope of the term “minerals” and that of “mineral substances” have been the subject of numerous judicial decisions (see, for example, the cases cited in *Words and Phrases*, Vol. 3, pp. 374 *et seq.*), but the present Act avoids the strict meaning of “minerals” by its reference in s. 119 (1), *post*, to “minerals and substances . . . ordinarily worked for removal.” Note that “minerals” includes peat if cut for sale, but not otherwise (s. 119 (1), *post*).

*Regulations.*—For the general provisions applicable to regulations under the Act, see s. 111, *post*. Note that regulations under the present section are to be made with Treasury consent (sub-s. (1), *ante*); such regulations are only to take effect on being approved by resolutions of both Houses (sub-s. (5), *supra*). To regulations where this affirmative resolution procedure applies, ss. 4–7 of the Statutory Instruments Act, 1946 (39 Halsbury's Statutes 785 *et seq.*), are inapplicable.

Regulations under sub-s. (4), *ante*, it should be noted, are to be made jointly by the Minister of Town and Country Planning and the Minister of Fuel and Power.

*Development charge.*—See s. 69 *et seq.*, *ante*.

*Appointed day.*—See ss. 119 and 120, *post*. July 1, 1948, has been appointed the day in question (S.I. 1948 No. 213).

*Restricted and unrestricted values.*—See s. 61, *ante*. Any excess of the unrestricted value over the restricted value of land as at the appointed day constitutes the development value of the land in question (s. 61 (1), *ante*).

*Mining lease.*—This is widely defined in s. 119 (1), *post*, the essence being the conferring of a right to win or work minerals.

*Mines (Working Facilities and Support) Act, 1923.*—12 Halsbury's Statutes 181. For Part I, comprising ss. 1–14 thereof, see 12 Halsbury's Statutes 181 *et seq.* S. 6 (1) of that Act empowers the Railway and Canal Commission by order to grant a variety of rights in relation to the working of minerals.

*Land designated as subject to compulsory acquisition.*—See, in particular, ss. 5 (1) (b) and 37, *ante*.

*Minerals vested in the National Coal Board.*—By s. 119 (1), *post*, the National Coal Board is defined by reference to the Coal Industry Nationalisation Act, 1946 (39 Halsbury's Statutes 251), s. 1 of which established the Board and laid down its functions. As to the transfer to, and vesting in the Board of property and rights, see ss. 5-9 of the 1946 Act (39 Halsbury's Statutes 260 *et seq.*).

*Prerogative right of His Majesty.*—By prerogative right the Crown is entitled to all mines of gold and silver within the realm, whether such mines are situate in its own lands or in the lands of a subject. See, generally, 6 Halsbury's Laws (2nd Edn.) 731 *et seq.*

*Definitions.*—As to "development" and "planning permission," see ss. 12, *ante*, and 119 (1), *post*; and as to "development plan," see ss. 5, *ante*, and 119 (1), *post*. For definition of "land," see s. 119 (1), *post*. Other definitions are referred to in the notes *supra*.

## 82. Land held by local authorities for general statutory purposes.—

(1) This section applies to land for the time being held by a local authority for the purposes of any of their functions as such, not being—

- (a) land to which the next following section applies ;
- (b) land held by the local authority for the purpose of any statutory undertaking carried on by them ; or
- (c) land of any class excepted from the provisions of this section by regulations made under this Act. [2578]

(2) No payment shall be made under Part VI of this Act to a local authority in respect of any interest in land which, on the appointed day, is land to which this section applies. [2579]

(3) In the case of land which, on the appointed day, was land to which this section applies, no development charge shall be payable under Part VII of this Act in respect of any operations carried out on the land, or in respect of any use of the land, while the land remains land to which this section applies. [2580]

(4) If by reason of an appropriation, sale or lease, any land which on the appointed day was land to which this section applies ceases to be such land, no development charge shall be payable under the said Part VII in respect of any development of the land for which planning permission had been granted under Part III of this Act at the time of the appropriation, sale or lease. [2581]

(5) Where any land to which this section applies is compulsorily acquired under this or any other Act, in pursuance of a notice to treat served on or after the appointed day, then, in assessing the compensation payable in respect of the acquisition, it shall be assumed—

- (a) that planning permission would be granted under Part III of this Act for any development by virtue of which the use of the land would be made to correspond with the use which prevails generally in the case of contiguous or adjacent land ; and
- (b) that no development charge would be payable under Part VII of this Act in respect of any such development. [2582]

*Effect of section.*—If at the appointed day land is held by a local authority for general statutory purposes, it will not rank for payment out of the global sum of £300,000,000, and no development charge will be payable in respect of its development. If the land is disposed of by the authority after the appointed day, no charge will be levied in respect of any development for which permission is given at the time of the disposal.

If the land is the subject of compulsory acquisition, it is to be assumed for purposes of compensation that permission would be granted to use the land in the same way as that prevalent in the case of contiguous or adjacent land and that no development charge would be levied in respect of development in accordance with that use.

*Regulations.*—For the general provisions applicable to regulations under the Act, see s. 111; *post*.

*Appointed day.*—This means such day as the Minister of Town and Country Planning may by order appoint (see ss. 119 (1) and 120, *post*). July 1, 1948, has been so appointed (S.I. 1948 No. 213).

*Contiguous or adjacent.*—See note to s. 5, *ante*, on these words.

*Definitions.*—As to "planning permission" and "development," see ss. 12, *ante*, and 119 (1), *post*. For definitions of "land," "local authority," "functions," "statutory undertaking," "use" and "lease," see s. 119 (1), *post*.

**83. Land acquired by local authorities and development corporations for comprehensive development or re-development.**—(1) No payment shall be made under Part VI of this Act in respect of any interest in land, being—

- (a) the interest of a local authority in land acquired or appropriated by that authority under Part I of the Act of 1944 for the purposes of the development or re-development of any area as a whole ; or
- (b) the interest of a development corporation in land acquired by the corporation under the New Towns Act, 1946 ;

and where a local authority or a development corporation have before the appointed day disposed of an interest in any such land, no payment shall be made under the said Part VI in respect of that interest. [2583]

(2) No development charge shall be payable under Part VII of this Act in respect of the following operations or uses of land, that is to say :—

- (a) any operations carried out by a local authority on any such land as is mentioned in paragraph (a) of the foregoing subsection or on any land acquired or appropriated by that authority under Part IV of this Act for the purposes of the development or re-development of any area as a whole, or any use by a local authority of any such land as aforesaid ;
- (b) any operations carried out by a development corporation on land acquired by the corporation under the New Towns Act, 1946, whether before or after the appointed day, or any use by a development corporation of any such land ;

and where any such land as aforesaid has been disposed of by the local authority or development corporation, whether before or after the appointed day, no development charge shall be payable as aforesaid in respect of the carrying out of any operations on the land or the institution of any use of the land, for which planning permission under Part III of this Act had been granted at the time of the disposal or, in the case of land disposed of before the appointed day, in respect of the carrying out of any operations on the land or the institution of any use of the land carried out or instituted in accordance with the terms of the instrument by which the land was disposed of. [2584]

(3) In respect of any such operations or uses of land as are mentioned in the last foregoing subsection, the local authority or development corporation shall from time to time pay to the Central Land Board such sums, if any, in lieu of development charges, as the Minister may, with the consent of the Treasury, determine :

Provided that the Minister may, with the like consent, direct the Board to repay from time to time the whole or any part of any sums so paid. [2585]

(4) Any sums received by the Central Land Board under the last foregoing subsection shall be paid into the Exchequer, and any sums required by the Central Land Board for the repayment of sums so received shall be defrayed out of moneys provided by Parliament. [2586]

*Effect of section.*—Land acquired for planning purposes whether under the 1944 Act (37 Halsbury's Statutes 423), the New Towns Act, 1946 (39 Halsbury's Statutes 664), or under the present Act will not be subject to a development charge when disposed of in respect of any development for which permission is granted at the time of such disposal. And where land has been acquired under the 1944 Act, or the New Towns Act, 1946, *supra*, no payment will be made out of the global sum under Part VI of the Act, *ante*.

In lieu of development charges, however, the Minister may require the local authority or the development corporation under the New Towns Act, 1946, *supra*, to make payments to the Central Land Board.

*Part I of the Act of 1944.*—The Town and Country Planning Act, 1944, ss. 1-56 ; 37 Halsbury's Statutes 423 *et seq.*

*New Towns Act, 1946.*—39 Halsbury's Statutes 664. As to development corporations under that Act, see s. 2 thereof (39 Halsbury's Statutes 665).

*Appointed day.*—This means such day as the Minister of Town and Country Planning may by order appoint (see ss. 119 (1) and 120, *post*). July 1, 1948, has been so appointed (S.I. 1948 No. 213).

*Development charge.*—See ss. 69 *et seq.*, *ante*.

*Central Land Board.*—For the establishment and functions of this Board, see ss. 2 and 3, *ante*.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Definitions.*—As to “development” and “planning permission,” see ss. 12, *ante*, and 119 (1), *post*. For definitions of “land,” “local authority” and “use,” see s. 119 (1), *post*.

**84. Operational land of statutory undertakers.**—(1) No payment shall be made under Part VI of this Act in respect of the interest of any statutory undertakers in land which, on the appointed day, is operational land. [2587]

(2) In the case of land which, on the appointed day, was operational land, no development charge shall be payable under Part VII of this Act in respect of any operations carried out on the land by the statutory undertakers, or in respect of any use of the land by them, while the land remains operational land. [2588]

(3) Where any land which on the appointed day was operational land ceases at any time thereafter to be operational land, no development charge shall be payable under the said Part VII in respect of—

(a) the use of that land for the purpose which prevails generally in the case of contiguous or adjacent land ;

(b) the carrying out of any operations necessary for the purpose of making that use of that land,

if the use is instituted, or the operations carried out, as the case may be, within such period after the cessation as may be prescribed by regulations under this Act. [2589]

(4) Where any operational land of statutory undertakers is compulsorily acquired, under this or any other Act, in pursuance of a notice to treat served on or after the appointed day, then if the compensation payable in respect of the acquisition is assessed in accordance with section two of the Acquisition of Land (Assessment of Compensation) Act, 1919, it shall be assumed—

(a) that planning permission would be granted under Part III of this Act for any development by virtue of which the use of the land would be made to correspond with the use which prevails generally in the case of contiguous or adjacent land ; and

(b) (whether or not the provisions of the last foregoing subsection are applicable to the land in question) that no development charge would be payable under Part VII of this Act in respect of any such development. [2590]

*Effect of section.*—Operational land of statutory undertakers will not rank for payment out of the global sum under Part VI of the Act, *ante*, and operational development will not be subject to a development charge under Part VII, *ante*.

Should any land cease to be operational after the appointed day, it may be disposed of as if its existing use were that generally prevailing on adjacent land and such development will be free of development charge. Should such land be the subject of compulsory acquisition, it is to be assumed that it has an existing use similar to that generally prevailing on adjacent land, and that no development charge would be payable in respect of that use. (Cf. s. 82, *ante*.)

*Appointed day.*—This means such day as the Minister of Town and Country Planning may by order appoint (see ss. 119 (1) and 120, *post*). July 1, 1948, has been so appointed (S.I. 1948 No. 213).

*Development charge.*—See ss. 69 *et seq.*, *ante*.

*Contiguous or adjacent.*—See note to s. 5, *ante*, on these words.

*Regulations.*—For the general provisions applicable to regulations under the Act, see s. 111, *post*.

*Acquisition of Land (Assessment of Compensation) Act, 1919, s. 2.*—2 Halsbury's Statutes 1178.

*Definitions.*—As to “planning permission” and “development,” see ss. 12, *ante*, and 119 (1), *post*. For definitions of “statutory undertakers,” “land,” “operational land” and “use,” see s. 119 (1), *post*.

**85. Land held on charitable trusts.**—(1) This section applies to land an interest in which is held on charitable trusts or for ecclesiastical or other charitable purposes of any description if the land, as distinct from the rents and profits thereof, is used in any manner (including use in a manner involving the beneficial occupation of the land by any person) for or in connection

with the purposes for which the said interest is held, and not otherwise, or if the land would be so used but for the occurrence of war damage or but for the fact that the land is for the time being requisitioned land. [2591]

(2) No payment shall be made under Part VI of this Act in respect of any such interest as aforesaid in land which, on the appointed day, is land to which this section applies; and no development charge shall be payable under Part VII of this Act in respect of any operations carried out on such land by the person entitled to any such interest for or in connection with the purposes for which that interest is held or in respect of any use of the land by that person for those purposes. [2592]

(3) Where any land which, on the appointed day, was land to which this section applies ceases at any time thereafter to be such land, no development charge shall be payable under Part VII of this Act in respect of any development by virtue of which the use of the land is made to correspond with the use which prevails generally in the case of contiguous or adjacent land, if planning permission for that development has been granted under Part III of this Act before the land ceases to be land to which this section applies. [2593]

(4) Where any such interest as is mentioned in subsection (1) of this section in land to which this section applies is compulsorily acquired under this or any other Act in pursuance of a notice to treat served on or after the appointed day, then if—

- (a) the land was land to which this section applies on the appointed day; or
- (b) the land is being used at the time of the notice to treat for a purpose of such a nature that there is no general demand or market for land for that purpose,

it shall be assumed, in assessing the compensation payable in respect of the acquisition of the said interest, that planning permission would be granted under Part III of this Act for any development by virtue of which the use of the land would be made to correspond with the use which prevails generally in the case of contiguous or adjacent land, and that no development charge would be payable under Part VII of this Act in respect of any such development. [2594]

(5) If, upon application made to him at any time within three years after the appointed day, the Minister is satisfied—

- (a) that any interest in land was held on that day on charitable trusts or for ecclesiastical or other charitable purposes of any description, but that the land was not then used in any such manner as is mentioned in subsection (1) of this section; and
- (b) that it is reasonable, having regard to any proposals for its future use, that the land should be treated for the purposes of this section as if it had been so used,

he may, if he thinks fit, direct that the foregoing provisions of this section shall have effect in relation to the land, so long as that interest is so held, as if the land was land to which this section applies and had been such land on the appointed day:

Provided that subsection (3) of this section shall not apply by virtue of any such direction if the interest in question ceases to be held on charitable trusts or for ecclesiastical or other charitable purposes before the land has been actually used in the manner aforesaid. [2595]

(6) For the purposes of subsection (1) of this section any interest in land which is held by the National Trust shall be deemed to be used for the purposes for which that interest is held, and not otherwise, if, and only if, that interest is held by the Trust inalienably. [2596]



*Effect of section.*—Land held on charitable trusts is treated in a similar fashion to land held by statutory undertakers. If it is operational land held for the purposes of the trust it will not rank for payment out of the global sum under Part VI of the Act, *ante*, and should it ever cease to be used for the purposes of the trust it may be sold free of development charge for development of the same character as that prevailing generally on adjacent land, provided planning permission for such development is obtained before the land ceases to be used for the purpose of the trust.

Investment land held by a charitable trust is subject to the provisions of the Act in the same way as land held by any other landowner; but land which it is intended to use for the purposes of the charity may be the subject of an application to the Minister within three years from July 1, 1948, and the Minister on such application may direct that such land shall be treated as operational land. This section also applies to land held inalienably by the National Trust.

*War damage.*—By s. 119 (1), *post*, this term has the same meaning as in the War Damage Act, 1943 (see s. 2 (1) thereof; 36 Halsbury's Statutes 338).

*Appointed day.*—This means such day as the Minister of Town and Country Planning may by order appoint (see ss. 119 (1) and 120, *post*). July 1, 1948, has been so appointed (S.I. 1948 No. 213).

*Development charge.*—See ss. 69 *et seq.*, *ante*.

*Contiguous or adjacent.*—See note to s. 5, *ante*, on these words.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*National Trust.*—Land may be held inalienably by the National Trust under the National Trust Act, 1907, s. 21, and the National Trust Act, 1939, s. 8. Neither is a public general statute and so neither appears in Halsbury's Statutes.

*Definitions.*—As to "development" and "planning permission," see ss. 12, *ante*, and 119 (1), *post*. For definitions of "land," "use" and "requisitioned land," see s. 119 (1), *post*.

**86. Land subject to claims for betterment under other Acts.**—Where, on the carrying out of any development after the appointed day, any payment falls to be made to a local authority by virtue of the provisions of section forty-eight of this Act or of any Act passed before the passing of this Act, in respect of any works carried out (whether before or after the passing of this Act) by that authority, then—

- (a) if the amount of any such payment is required to be calculated by reference to any increase in the value of the land in respect of which the payment is made, the amount of that increase shall be calculated as if Part VII of this Act had not been enacted;
- (b) whether or not the amount of any such payment falls to be calculated as aforesaid, the payment, or the liability therefor, shall be taken into account in determining under the said Part VII whether any and if so what development charge is to be paid in respect of that development. [2597]

*Effect of section.*—Where land is subject to a betterment claim under any Act passed before the present Act or to liability to make a payment under s. 48 of the present Act, *ante*, which relates to the construction and improvement of private streets, such claim or liability will be calculated without reference to any liability for development charge; but in calculating the development charge under the present Act, the claim or liability to make a payment will be taken into account.

*Appointed day.*—This means such day as the Minister of Town and Country Planning may by order appoint (see ss. 119 (1) and 120, *post*). July 1, 1948, has been so appointed (S.I. 1948 No. 213).

*Passing of this Act.*—August 6, 1947.

*Development charge.*—See ss. 69 *et seq.*, *ante*.

*Definitions.*—As to "development," see ss. 12, *ante*, and 119 (1), *post*. For definitions of "local authority" and "land," see s. 119 (1), *post*.

**87. Crown Land.**—(1) In this and the next following section the expression "Crown land" means land an interest in which belongs to His Majesty in right of the Crown or of the Duchy of Lancaster, or to the Duchy of Cornwall, and land an interest in which belongs to a government department or is held in trust for His Majesty for the purposes of a government department. [2598]

(2) Notwithstanding any interest of the Crown in land being Crown land as defined by this section but subject to the following provisions of this section,—

- (a) a development plan approved or made under Part II of this Act may include proposals relating to the use of the land and may designate the land as subject to compulsory acquisition, and any power to



acquire land compulsorily under Part IV of this Act may be exercised in relation to any interest therein which is for the time being held otherwise than by or on behalf of the Crown ;

- (b) any restrictions and powers imposed and conferred by the said Part III, shall apply and be exercisable in relation to the land, to the extent of any interest therein for the time being held otherwise than by or on behalf of the Crown, and the provisions of that Part, and of Parts VI, VII and VIII of this Act shall have effect accordingly. [2599]

(3) Except with the consent of the appropriate authority as defined by this section—

- (a) no notice or order shall be served or made under section twenty-three, twenty-six, twenty-eight, twenty-nine or thirty-three of this Act (or under any of those provisions as applied by any order or regulations made under Part III of this Act) in relation to land which for the time being is Crown land ;
- (b) no building which is for the time being Crown land shall be included in any list compiled or approved under section thirty of this Act ;
- (c) no interest in land which is for the time being Crown land shall be acquired compulsorily under Part IV of this Act. [2600]

(4) No purchase notice shall be served under section nineteen of this Act in relation to any interest in Crown land unless an offer has been previously made by the owner of that interest to dispose thereof to the appropriate authority on terms that the price payable therefor shall be equal to (and shall be determined, in default of agreement, in like manner as) the compensation which would be payable in respect of that interest if it were acquired in pursuance of such a notice, and that offer has been refused by that authority. [2601]

(5) No notice shall at any time be served under section twenty-three of this Act in respect of development carried out by or on behalf of the Crown after the appointed day on land which was Crown land at the time when the development was carried out. [2602]

(6) For the purposes of this and the next following section, the expression “the appropriate authority”, in relation to any land, means—

- (a) in the case of land belonging to His Majesty in right of the Crown, the Commissioners of Crown Lands or other government department having the management of the land in question ;
- (b) in the case of land belonging to His Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy ;
- (c) in the case of land belonging to the Duchy of Cornwall, such person, as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints ; and
- (d) in the case of land belonging to a government department or held in trust for His Majesty for the purposes of a government department, that department ;

and, if any question arises as to what authority is the appropriate authority in relation to any land, that question shall be referred to the Treasury, whose decision shall be final. [2603]

*Effect of section.*—This section virtually excludes Crown land from planning control. No control can be exercised over any interest which is held by or on behalf of the Crown. But interests in the same property held otherwise than by or on behalf of the Crown will rank for payment out of the global sum under Part VI of the Act. Any development relating to such an interest will require permission ; but the application of the enforcement provisions will require the consent of the government department concerned with the particular property.

*Designate the land as subject to compulsory acquisition.*—See ss. 5 (2) (b) and 37 *et seq.*, *ante*.

*Appropriate authority.*—This term is defined in sub-s. (6), *supra*.

*Notice shall be served.*—For the general provisions as to service of notices, see s. 105, *post*.

*Appointed day.*—This means such day as the Minister of Town and Country Planning may by order appoint (see ss. 119 (1) and 120, *post*). July 1, 1948, has been so appointed (S.I. 1948 No. 213).

*Commissioners of Crown lands.*—See the Crown Lands Act, 1832, s. 1 (3 Halsbury's Statutes 264), and the Crown Lands Act, 1927, s. 1 (3 Halsbury's Statutes 330).

*Definitions.*—As to "development plan," see ss. 5, *ante*, and 119 (1), *post*; as to "purchase notice," see ss. 19, *ante*, and 119 (1), *post*; as to "development," see ss. 12, *ante*, and 119 (1), *post*; and as to "Crown land," see sub-s. (1), *ante*. For definitions of "land," "government department" and "building," see s. 119 (1), *post*.

**88. Agreements and arrangements relating to Crown land.**—(1) The appropriate authority and the local planning authority for the district in which any Crown land is situated may make agreements for securing the use of the land, so far as may be prescribed by any such agreement, in conformity with the provisions of the development plan applicable thereto (or, during any period before such a plan has become operative with respect to the land, in conformity with the requirements of the proper planning of that district), and any such agreement may contain such consequential provisions, including provisions of a financial character, as may appear to be necessary or expedient having regard to the purposes of the agreement :

Provided that—

- (a) an agreement made under this subsection by the Commissioners of Crown Lands or by any government department shall be of no effect unless it is approved by the Treasury ; and
- (b) in considering whether to make or approve an agreement under this section relating to land belonging to a government department, or held in trust for His Majesty for the purposes of a government department, the department and the Treasury shall have regard to the purposes for which the land is held by or for the department.

[2604]

(2) In relation to land belonging to His Majesty in right of the Duchy of Lancaster, or to the Duchy of Cornwall, arrangements may be made, with the approval of the Treasury, between the appropriate authority and the Central Land Board—

- (a) for the inclusion among the interests in land in respect of which payments may be made under Part VI of this Act of any interest of the Crown in the land ;
- (b) for the payment by the appropriate authority to the Board of such sums as may be determined in accordance with the arrangements to be appropriate in substitution for any development charge which would have become payable in respect of any development of the land under Part VII of this Act if that development had not been carried out on behalf of the Crown. [2605]

(3) Any sums received by the Central Land Board under any such arrangements as aforesaid shall be paid into the Exchequer. [2606]

(4) The purposes authorised by section twenty-five of the Act of the fifty-seventh year of King George the Third, chapter ninety-seven, for the application of moneys arising by any such sale of annuities standing in the name or to the account of the Duchy of Lancaster as is therein mentioned shall include the payment of any sums payable in respect of land belonging to the Duchy in accordance with arrangements made under this section. [2607]

(5) The purposes authorised by section eight of the Duchy of Cornwall Management Act, 1863, as amended by section one of the Act of the thirty-first and thirty-second years of Queen Victoria, chapter thirty-five, for the advancement of parts of such gross sums as are therein mentioned shall include the payment of any sums payable in respect of land belonging to the Duchy of Cornwall in accordance with arrangements made as aforesaid. [2608]

*Effect of section.*—Local planning authorities may enter into agreements with the Crown as to the use of Crown land. In the case of land held in right of the Duchy of Lancaster or Cornwall, arrangements can be made with the Central Land Board bringing such land within the provisions of Part VI of the Act and providing for payment of sums equivalent to the development charges under Part VII, *ante*, when such land is developed.

*Appropriate authority.*—For definition, see s. 87 (5), *ante*.

*Crown land.*—For definition, see s. 87 (1), *ante*.

*Commissioners of Crown Lands.*—See the Crown Lands Act, 1832, s. 1 (3 Halsbury's Statutes 264), and the Crown Lands Act, 1927, s. 1 (3 Halsbury's Statutes 330).

*Central Land Board.*—For the constitution and functions of the Board, see ss. 2 and 3, *ante*.

*Development charge.*—See ss. 69 *et seq.*, *ante*.

*Duchy of Cornwall Management Act, 1863.*—26 & 27 Vict. c. 49. This Act does not appear in Halsbury's Statutes.

*Definitions.*—As to "local planning authority," see ss. 4, *ante*, and 119 (1), *post*; as to "development plan," see ss. 5, *ante*, and 119 (1), *post*; and as to "development," see ss. 12, *ante*, and 119 (1), *post*. For definitions of "use," "land" and "government department," see s. 119 (1), *post*.

**89. Requisitioned land.**—(1) For the purposes of Part VI of this Act, the development value of any interest in land which is requisitioned land on the appointed day shall be calculated as if the land had been on that day in the state in which it was immediately before the beginning of the period of requisition, and accordingly, in relation to any such interest, the second reference to the appointed day in subsection (5) of section sixty-one of this Act, and any reference to that day in the Third Schedule to this Act, shall be construed as a reference to the beginning of the period of requisition :

Provided that—

(a) where a payment in respect of the value of any buildings or works erected or constructed on the land during the period of requisition has been or is required to be made to a Minister by any person interested in the land in pursuance of an agreement made between them, or where any such buildings or works were otherwise erected or constructed wholly or partly at the expense of any such person, those buildings or works shall be treated for the purposes of this subsection as having been erected or constructed immediately before the beginning of the period of requisition ; and

(b) in calculating the development value of any interest in the land, such adjustment as may be appropriate shall be made in respect of any development carried out during the period of requisition, being development in respect of which compensation is payable under the Compensation (Defence) Act, 1939, or under regulations made under the Emergency Powers (Defence) Act, 1939. [2609]

(2) Where any payment falls to be made under section fifty-eight of this Act in respect of any interest in land which is requisitioned land on the appointed day, any payment in respect of the value of any works on the land made to a Minister under Part II of the Requisitioned Land and War Works Act, 1945, in pursuance of a report of the War Works Commission, may include such sum as that Commission may think just, not exceeding the amount of the payment to be made under the said section fifty-eight in respect of any increase in the value of the interest in the land which is attributable to the carrying out of the works. [2610]

(3) In this section the expression "requisitioned land" means land of which possession has been taken on behalf of His Majesty in the exercise or purported exercise of emergency powers (that is to say powers conferred by regulations made under the Emergency Powers (Defence) Act, 1939, by section fifty-two of the Telegraph Act, 1863, or by section seven of the Air Navigation Act, 1920, or exercisable by virtue of the prerogative of the Crown); and the expression "period of requisition" in relation to requisitioned land means the period during which possession of the land under such powers taken as aforesaid continues. [2611]

*Effect of section.*—In brief, the development value of requisitioned land is to be calculated by reference to the state of the land before requisitioning. Where any works, however, have been carried out at the expense of any person interested in the land, such works are to be treated as if they had been carried out before requisitioning.

*Development value.*—See s. 61, *ante*. This is broadly the difference between the restricted and unrestricted values of land at the appointed day.

*Appointed day.*—This means such day as the Minister of Town and Country Planning may by order appoint (see ss. 119 (1) and 120, *post*). July 1, 1948, has been so appointed (S.I. 1948 No. 213).

*Third Schedule.*—See *post*. This Schedule defines the development included in existing use.

*Compensation (Defence) Act, 1939.*—32 Halsbury's Statutes 1013.

*Emergency Powers (Defence) Act, 1939.*—32 Halsbury's Statutes 930.

*Requisitioned Land and War Works Act, 1945, Part II.*—38 Halsbury's Statutes 586 *at seq.*  
*Report of the War Works Commission.*—See the Requisitioned Land and War Works Act, 1945, ss. 9 and 10 (38 Halsbury's Statutes 591, 593).

*Telegraph Act, 1863, s. 52.*—19 Halsbury's Statutes 238. This section relates to the power of the Crown to take possession of telegraphs in an emergency.

*Air Navigation Act, 1920, s. 7.*—19 Halsbury's Statutes 195. This section gives special powers in cases of emergency.

*Definitions.*—As to "requisitioned land" and "period of requisition," see sub-s. (3), *ante*, and 119 (1), *post*; and as to "development," see ss. 12, *ante*, and 119 (1), *post*. For definitions of "buildings or works," "a Minister," "erection" and "land," see s. 119 (1), *post*.

**90. Property of National Coal Board.**—(1) Regulations made under this Act by the Minister and the Minister of Fuel and Power with the consent of the Treasury may direct that any of the provisions of this Act relating to statutory undertakers and to land of such undertakers shall apply, subject to such adaptations, modifications and exceptions as may be specified in the regulations, in relation to the National Coal Board, and in relation to land (including mines) of that Board of any such class as may be specified in the regulations, as if the Board were statutory undertakers and as if the land of any class so specified were operational land within the meaning of this Act. [2612]

(2) Without prejudice to the generality of the foregoing subsection, any regulations made for the purposes of that subsection may in particular provide that any compensation payable to the National Coal Board by virtue of any of the provisions applied by those regulations, being compensation which, in the case of statutory undertakers, would be assessable in accordance with the provisions of the Fourth Schedule to the Act of 1944, shall, in lieu of being so assessed, be assessed in accordance with the provisions of the regulations. [2613]

*Effect of section.*—This section enacts that the provisions relating to statutory undertakers are to apply to the National Coal Board subject to such modifications as may be made by regulations made jointly by the Minister and the Minister of Fuel and Power with Treasury consent.

*Regulations.*—For the general provisions applicable to regulations under this Act, see s. 111, *post*.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Statutory undertakers.*—For definition, see s. 119, *post*. For provisions relating to statutory undertakers, see ss. 5, 9, 35, 37, 45, 49, 57 and 84, *ante*, and 91 and 98, and Schedules V and XI, *post*.

*National Coal Board.*—As to the establishment of this Board, see the Coal Industry Nationalisation Act, 1946, s. 1 (39 Halsbury's Statutes 256). See also s. 119 (1), *post*.

*Fourth Schedule to the Act of 1944.*—The Town and Country Planning Act, 1944, Sched. IV (37 Halsbury's Statutes 487). As amended by the present Act this Schedule is reprinted in Sched. XI, *post*.

*Definitions.*—For definitions of "land" and "operational land," see s. 119 (1), *post*. Other definitions are referred to in the notes *supra*.

**91. Land in process of compulsory acquisition, etc.**—(1) Where any interest in land is compulsorily acquired on or after the appointed day by any authority or person in pursuance of a notice to treat served before the passing of this Act, the provisions of this Act and of any scheme made under Part VI of this Act shall apply in relation to that interest as if the purchase had been completed immediately before the appointed day. [2614]

(2) Where any interest in land is compulsorily acquired before the appointed day by any government department or local or public authority within the meaning of the Acquisition of Land (Assessment of Compensation)

Act, 1919, in pursuance of a notice to treat served after the passing of this Act, then—

- (a) the provisions of Part VI of this Act and of any scheme made thereunder shall have effect in relation to the land as if that interest had been subsisting on the appointed day with all incidents to which it was subject immediately before the date of the notice to treat, as if the land had been on the appointed day in the same state as it was immediately before the date of the notice to treat, and as if the person who was entitled thereto immediately before the date of the notice to treat had been entitled thereto on the appointed day ;
- (b) except as aforesaid, no payment shall be made under the said Part VI in respect of the interest so acquired, or in respect of any interest derived therefrom ; and
- (c) subject as hereinafter provided, nothing in this Part of this Act shall be construed as exempting from the payment of a development charge any operations carried out on the land by the person entitled to any such interest, or any use of the land by any such person :

Provided that paragraph (c) of this subsection shall not apply to any operations or uses of land which are exempted from the payment of a development charge by virtue of any of the provisions of section eighty-three of this Act. [2615]

(3) Where any interest in land is compulsorily acquired (whether before, on or after the appointed day) in pursuance of a notice to treat served after the appointed day) in pursuance of a notice to treat served after the passing of this Act, then—

- (a) where the compensation payable in respect thereof falls to be calculated in accordance with any of the provisions of sections fifty-two to fifty-four of this Act, that provision shall apply, subject to any necessary modifications, for the purpose of calculating under Part VI of this Act the restricted and the unrestricted values of that interest ;
- (b) where the compensation so payable falls to be assessed in accordance with Rule (5) of the rules set out in section two of the Acquisition of Land (Assessment of Compensation) Act, 1919, as amended by subsection (2) of section fifty-six of this Act, the provisions of the said Rule (5), as so amended, shall apply, subject to any necessary modifications, for the purpose of calculating under the said Part VI the restricted value of that interest,

and any calculation of those values previously made under the said Part VI shall be adjusted accordingly. [2616]

(4) Subject as hereinafter provided, the foregoing provisions of this section shall apply where an interest in land is acquired by agreement by any authority or person who have power or could be authorised to acquire that interest compulsorily under any enactment, as they apply where an interest in land is compulsorily acquired, and in relation to any such acquisition any reference in those provisions to the service of notice to treat shall be construed as a reference to the making of the contract, and the reference in the last foregoing subsection to compensation payable in respect of the compulsory acquisition shall be construed as a reference to the compensation which would be so payable if the land were compulsorily acquired :

Provided that—

- (a) the provisions of section fifty-three of this Act shall not apply for the purpose of calculating the restricted and the unrestricted values of any interest acquired as aforesaid except in the cases provided by subsection (2) of that section, or by that section as extended by subsection (1) of section fifty-five of this Act ;

- (b) the provisions of Rule (5) of the rules set out in section two of the Acquisition of Land (Assessment of Compensation) Act, 1919, as amended by subsection (2) of section fifty-six of this Act, shall not apply for the purpose of calculating the restricted value of any interest acquired as aforesaid except in the cases provided by subsection (3) of the said section fifty-six; and
- (c) where any interest in land is acquired as aforesaid before the appointed day in pursuance of a contract made after the passing of this Act, the contract may provide that subsections (2) and (3) of this section shall not apply. [2617]

*Effect of section.*—This section makes provision with regard to land in the process of acquisition before the appointed day (see *infra*).

The material date for determining the rules which will apply is the date of the notice to treat. If the notice was served before the passing of the present Act, the provisions relating to development values do not apply and the land will be acquired at 1939 prices under the 1944 Act (37 Halsbury's Statutes 420) subject to the retrospective amendments contained in Sched. VII, *post*. If the notice is served after the passing of the Act and before the appointed day, the acquiring authority will pay the existing use value for the land under ss. 51 and 55, *ante*, and the vendor will be entitled to make a claim upon the global sum under Part VI of the Act, *ante*, as if he were the owner of the interest on the appointed day.

If land which could have been acquired compulsorily is acquired by agreement, the same rules will apply, but the date of the making of the contract will be the cardinal date in place of the date of service of the notice to treat.

The purpose of proviso (c) to sub-s. (4), *ante*, is described in para. 14 of the notes to Ministry of Health Circular 108/47, as being to enable cases where negotiations were well advanced on the basis of 1939 prices at the date of the Royal Assent (although no contract had been made) to be completed on that basis if the parties agree. If the contract has not been made, the vendor, of course, can insist on the provisions of the present Act applying, if he thinks it to his advantage to do so.

*Commencement of section.*—For the special provisions applicable, see s. 120, *post*.

*Appointed day.*—This means such day as the Minister of Town and Country Planning may by order appoint (see ss. 119 (1) and 120, *post*). July 1, 1948, has been so appointed (S.I. 1948 No. 213).

*Local or public authority, etc.*—See the Acquisition of Land (Assessment of Compensation) Act, 1919, ss. 1 and 12 (2 Halsbury's Statutes 1176, 1183).

*Restricted and unrestricted values.*—See s. 61 (2), *ante*.

*Acquisition of Land (Assessment of Compensation) Act, 1919.*—2 Halsbury's Statutes 1176. For s. 2, Rule 5, see 2 Halsbury's Statutes 1178.

*Acquired by agreement.*—See, for instance, s. 40, *ante*.

*Definitions.*—For definitions of "land," "government department," "local authority," "use" and "enactment," see s. 119 (1), *post*.

**92. Determination of questions under Part VIII.**—(1) Any question whether land is land to which section eighty-two, eighty-three or eighty-five of this Act applies shall be determined by the Minister. [2618]

(2) Any question of law arising in connection with any such determination as aforesaid, being a question relating to the application of the said section eighty-five, may, if the Minister thinks fit, be referred for decision to the High Court; and any person aggrieved by the decision of the Minister on any such question of law which is not so referred may appeal from that decision to the High Court. [2619]

(3) Provision shall be made by rules of court for regulating references and appeals to the High Court under this section and those rules shall provide for the limiting the time within which such appeals may be brought. [2620]

(4) So much of subsection (1) of section sixty-three of the Supreme Court of Judicature (Consolidation) Act, 1925, as requires an appeal from any person to the High Court to be heard and determined by a divisional Court shall not apply to appeals under this section. [2621]

*Effect of section.*—The Minister is empowered to determine whether particular land comes within the sections relating to local authorities and charities, but questions of law as to the application of s. 85, *ante*, in regard to charity land may be referred to the High Court.

Note the provisions of s. 119 (2), *post*, in relation to operational land of statutory undertakers.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*If the Minister thinks fit.*—See note to s. 4, *ante*, on the phrase "If it appears to the Minister."

*Supreme Court of Judicature (Consolidation) Act, 1925, s. 63 (1).*—13 Halsbury's Statutes 224.



## PART IX

## FINANCES OF LOCAL AUTHORITIES

**93. Exchequer grants to local authorities in respect of acquisition and clearance of land in re-development areas.**—(1) Provision may be made by regulations made under this Act with the consent of the Treasury for the payment by the Minister to local authorities of grants of such amounts, and payable over such periods and subject to such conditions, as may be determined by or under the regulations in respect of expenditure incurred by those authorities, in the exercise of powers conferred in that behalf by this Act, in connection with the acquisition and clearing of land approved by the Minister for the purposes of the regulations, being land acquired for the re-development as a whole of areas of extensive war damage or areas of bad layout or obsolete development, or for the relocation of population or industry, or the replacement of open space, in the course of such re-development, or derelict land acquired for the purpose of bringing it into use. [2622]

(2) For the purposes of this section, any expenditure incurred by a local authority before the passing of this Act, under powers in that behalf conferred by the Act of 1944, in the acquisition or clearing of any such land as is mentioned in the foregoing subsection shall be treated as incurred in the exercise of the corresponding powers conferred in that behalf by this Act, and no grant shall be payable under the Act of 1944 in respect of the acquisition or clearing of any such land. [2623]

(3) Regulations made under this section may provide for the payment of grants thereunder, in such cases and subject to such conditions as may be prescribed by or under the regulations, in respect of land appropriated by local authorities (whether before or after the passing of this Act) for any of the purposes specified in subsection (1) of this section as if the land had been acquired for those purposes at a cost of such amount, and defrayed in such manner, as may be determined by or under the regulations. [2624]

(4) Without prejudice to the generality of the foregoing provisions of this section, any regulations made thereunder may provide—

- (a) for the inclusion in the expenditure incurred by local authorities in the acquisition of land for any of the purposes specified in subsection (1) of this section of any sums, or any part of sums, paid by those authorities in connection with any restriction imposed on the development or use of the land by or under any enactment (whether by way of compensation or by way of contribution towards damage or expense incurred in consequence of the restriction) ;
- (b) for the calculation of grants payable under the regulations by reference to the amount of the annual costs incurred or treated as being incurred by local authorities in respect of the borrowing of money to defray expenditure in respect of which the grants are made ;
- (c) for the payment of such grants at different rates in respect of different parts of the period during which they are payable ;
- (d) for the payment of such grants at different rates to different local authorities according to the general financial position of those authorities respectively, and to the financial burdens assumed by them respectively in respect of the matters specified in subsection (1) of this section. [2625]

(5) Grants payable under regulations made for the purposes of this section shall not exceed the following amounts :—

- (a) in the case of land acquired or appropriated for the re-development as a whole of areas of extensive war damage, or for the relocation of population or industry or the replacement of open space in the



course of such re-development, an amount equal to ninety per cent. of the annual costs incurred or treated as being incurred by local authorities in respect of the borrowing of money to defray expenditure in respect of which the grants are made ;

- (b) in the case of any other land, an amount equal to eighty per cent. of the said annual costs. [2626]

(6) Any expenses incurred by the Minister in the making of grants in accordance with regulations made for the purposes of this section shall be defrayed out of moneys provided by Parliament. [2627]

*Effect of section.*—Under this section regulations may be made for the payment of Exchequer grants in respect of expenditure on acquisition and clearing of areas of war damage, obsolete development and bad lay-out, including land required for the relocation of industry and population or the replacement of open space, and for the acquisition and clearing of derelict land acquired for the purpose of bringing it into use.

The grants will be a percentage of the annual cost. In the case of war-damaged land the maximum will be 90 per cent. and in the case of other land 80 per cent. On the Third Reading in the House of Commons on May 20, 1947, the Minister indicated that the grants would be for a period of sixty years. In the case of war-damaged land the first five to eight years will be at the maximum rate of 90 per cent. and for the remainder of the period at the rate of 50 per cent. In the case of other land the grants will be paid on a weighted basis and will begin at 80 per cent. for the first five years and 50 per cent. for the remainder and will decline to 50 per cent. for the first five years, 30 per cent. for the next seven years and 20 per cent. for the remainder (437 H. of C. Official Report 2201-2202).

This section supersedes the provisions of s. 5 of the 1944 Act (37 Halsbury's Statutes 430), which limited grants to areas of war damage. The grants under this section have retrospective effect in relation to action taken under the 1944 Act in respect of development to which this section applies.

It will be a condition of the making of grants under this section that the re-development proposals shall have been approved as likely to result in an annual return and annual equivalent which are reasonable in relation to one another having regard to the circumstances and the requirements of proper re-development (see s. 95, *post*).

See also s. 95, *post*, as to a condition that may require negotiations and valuations to be carried out by the Valuation Office.

*Regulations.*—See sub-s. (4), *ante*, as to contents and s. 111, *post*, as to the making of regulations under this section. Note that Treasury consent to such regulations is required.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Re-development as a whole.*—See ss. 5 (3) and 38 (2), *ante*.

*Areas of extensive war damage ; areas of bad lay-out or obsolete development ; relocation of population or industry ; replacement of open space.*—All these terms are defined in s. 119 (1), *post*, and it is important that the present section should be read in conjunction with that subsection. "Derelict land" is not defined in s. 119 (1), *post*.

Note the provisions of s. 5 (3), *ante*, in regard to definition of areas as areas of comprehensive development by development plans.

*Passing of this Act.*—August 6, 1947.

*Powers conferred by the Act of 1944.*—See the Town and Country Planning Act, 1944, ss. 1, 2 and 3 (37 Halsbury's Statutes 423, 426, 428).

*No grant shall be payable, etc.*—As to the making of grants to local authorities under the Act of 1944, see the Town and Country Planning Act, 1944, s. 5 (37 Halsbury's Statutes 430).

*Definitions.*—As to "development," see ss. 12, *ante*, and 119 (1), *post*. For definitions of "local authority," "land," "use," "Act of 1944" and "enactment," see s. 119 (1), *post*.

**94. Other Exchequer grants to local authorities.**—(1) Provision may be made by regulations made under this Act with the consent of the Treasury for the payment by the Minister to local planning authorities and other local authorities of grants of such amounts, and payable in such cases and subject to such conditions, as may be determined by or under the regulations—

- (a) in respect of expenditure incurred by those authorities in the payment of compensation under Part III or Part VIII of this Act, other than compensation payable in respect of land compulsorily acquired by virtue of section nineteen of this Act, and in respect of expenditure incurred by those authorities in taking any action under section twenty-six of this Act ;
- (b) in respect of loss incurred by those authorities in connection with the acquisition and clearing of land approved by the Minister for the purposes of the regulations, including land compulsorily acquired by virtue of the said section nineteen, but excluding any such land as is mentioned in subsection (1) of the last foregoing section. [2628]

(2) Paragraphs (a), (b) and (d) of subsection (4) and subsection (6) of the last foregoing section shall apply in relation to regulations made under this section and to expenses incurred by the Minister in the making of grants under such regulations as they apply in relation to regulations made under the last foregoing section and to expenses incurred by the Minister in the making of grants under those regulations. [2629]

(3) Grants payable under regulations made for the purposes of this section shall not exceed an amount equal to fifty per cent. of the amount of the expenditure or loss in respect of which the grants are made. [2630]

*Effect of section.*—This section provides for the making of grants in respect of expenditure incurred in paying compensation under Parts III and VIII.

Claims under these Parts may arise under ss. 20, 22, 27, 28, 29, 32 and 79, *ante*. S. 20 is concerned with compensation payable in respect of the refusal of planning permission for development set out in Part II of Sched. III, *post*; s. 22 with compensation payable where planning permission is revoked or modified (this relates only to consents granted under Part III or deemed to be so granted by s. 77, *ante*: in respect of pre-1943 Act consents revoked by the Act compensation for abortive expenditure is dealt with in s. 79 and claims for depreciation must be made under Part VI); s. 27 deals with compensation in respect of orders under s. 26 requiring the removal of existing or authorised works or the discontinuance of existing or authorised uses; ss. 28 and 29 are concerned with the making of tree and building preservation orders respectively; under s. 32 compensation will be paid in respect of expenses incurred in removing advertisements which were being displayed on January 7, 1947; s. 79 provides for the payment of compensation in respect of abortive expenditure incurred under a pre-1943 Act consent where application made within six months after the appointed day in respect of such development is refused by the Minister.

The present section also provides for a grant to be made in respect of any loss incurred in respect of the acquisition and clearing of any land approved by the Minister including land acquired in pursuance of a compulsory purchase notice under s. 9, *ante*. Presumably this provision will also relate to land acquired under s. 38 (1) (b), *ante*, where such land does not qualify under s. 93 (1) as derelict land to be acquired for the purpose of bringing it into use.

Grants under this section are not to exceed 50 per cent. of the expenditure or loss. The Minister's approval of a grant under this section may require any negotiations for acquisition or any valuation to be carried out by the Valuation Office (s. 95 (2), *post*). Grants under the present section may be paid on a weighted basis depending on the financial position of the local authority.

*Regulations.*—For the general provisions as to regulations under the Act, see s. 111, *post*. Note the provisions of sub-s. (1), *ante*, as to Treasury consent to regulations.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Local planning authorities.*—See ss. 4 and 34, *ante*, and as to London, s. 114, *post*.

*Local authority.*—See s. 119 (1), *post*.

*Part III.*—See *ante*. This Part of the Act contains the development control provisions; see ss. 20, 22, 27, 28, 29 and 32 for liability to pay compensation.

*Part VIII.*—See *ante*. This Part deals with the application of the Act to special cases; see s. 79, *ante*, as to liability to pay compensation.

S. 19.—See *ante*. This section deals with purchase notice procedure.

S. 26.—See *ante*. This section confers power to require the removal or discontinuance of existing or authorised works or uses.

## 95. General provisions as to Exchequer grants to local authorities.—

(1) It shall be a condition of the making of grants under regulations made for the purposes of section ninety-three of this Act, in respect of expenditure incurred by a local authority in connection with the acquisition and clearing of any land—

(a) that there shall have been submitted to the Minister such information as to the proposals of the local authority for the lay-out and redevelopment of the land as the Minister may require in order to enable a comparison to be made between the annual return to the authority from the carrying out of the redevelopment and the annual equivalent of the cost thereof; and

(b) that those proposals shall have been approved by the Minister with the consent of the Treasury as being likely to result in an annual return and an annual equivalent such as are mentioned in the foregoing paragraph which are reasonable in relation to one another having regard to the circumstances of the land and the requirements of a proper lay-out and redevelopment. [2631]

(2) Any approval of the Minister required for the purposes of the payment of grant under section ninety-three or section ninety-four of this Act in connection with the acquisition of land may be given subject to compliance with

requirements imposed by the Minister for securing that any negotiations for the acquisition of the land by the local authority will be carried out by the Valuation Office, and that any valuation of such land for the purposes of such acquisition or for any purposes of the regulations, will be made by that office. [2632]

(3) Subject to the foregoing provisions of this section, any regulations made for the purposes of either of the two last foregoing sections may make provision whereby the payment of grants in pursuance of the regulations is dependent upon the fulfilment of such conditions as may be determined by or in accordance with the regulations, and may also make provision for requiring local authorities to whom grants have been so made to comply with such requirements as may be so determined. [2633]

*Effect of section.*—This section is concerned with the conditions which may be imposed on the making of grants under ss. 93 and 94, *ante*.

Sub-s. (1), *ante*, entails that substantial financial details must be submitted to the Minister in respect of any comprehensive re-development proposals contained in any development plan under s. 5, *ante*. Apparently it is not necessary, however, that this information should be submitted to the Minister at the public local inquiry into the making of the plan even though it might have a material bearing on the Minister's decision as to the extent to which designation for compulsory purchase should be approved. Any objection to the plan that might be pressed on this ground could be met by a statement that the Minister could always satisfy himself as to such objection by consulting under s. 10 (3), *ante*, with the authority concerned, and that the financial proposals of the authority responsible for development would not be part of the local planning authority's case in promoting the plan.

As to general recommendations applicable to re-development proposals, see the Report of the Central Advisory Committee on Estate Development and Management in War-Damaged Areas (H.M. Stationery Office).

Sub-s. (2), *ante*, is designed to secure that a condition may be imposed for negotiations for acquisition, and also valuations, to be carried out by the Valuation Office of the Inland Revenue.

*Regulations.*—For the general provisions as to regulations under the Act, see s. 111, *post*.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Reasonable . . . having regard to the circumstances.*—In dealing with a similar provision in s. 12 (7) of the New Towns Act, 1946 (39 Halsbury's Statutes 675), the Minister indicated that he was prepared to accept in certain circumstances that a reasonable return would not necessarily be a return providing a profit (424 H. of C. Official Report 2364).

*Definitions.*—For definitions of "local authority," "land" and "Valuation Office," see s. 119 (1), *post*.

**96. Grants in respect of certain compensation paid by planning authorities before appointed day.**—(1) Provision may be made by regulations made under this Act with the consent of the Treasury for the payment by the Minister to local authorities who were interim development authorities for the purposes of the Act of 1932 of grants of such amounts, and payable in such cases, as may be determined by or under the regulations in respect of expenditure incurred by those authorities—

- (a) in the payment of contributions under subsection (4) of section ten of the Act of 1932 in connection with applications for permission to develop land dealt with after the eleventh day of May, nineteen hundred and forty-three;
- (b) in the payment of contributions under the said subsection (4) as applied by section four of the Town and Country Planning (Interim Development) Act, 1943, or of compensation under subsection (2) of section seven of that Act, in respect of the revocation or modification, after the date aforesaid, of any permission to develop land, whether granted before or after that date,

being contributions or compensation payable in respect of loss or damage which operated to reduce the development value on the appointed day of any interest in the land. [2634]

(2) The reference in the foregoing subsection to local authorities who were interim development authorities for the purposes of the Act of 1932 shall be construed as including a reference to local authorities being the constituent authorities of a joint committee who were such an interim development authority, and in relation to any such local authority the reference in that

subsection to expenditure incurred by that authority shall be construed as a reference to expenditure incurred by the joint committee. [2635]

(3) Any expenses incurred by the Minister in the making of grants in accordance with regulations made for the purposes of this section shall be defrayed out of moneys provided by Parliament. [2636]

*Effect of section.*—Under the 1932 Act (25 Halsbury's Statutes 470) compensation for injurious affection by reason of the refusal of interim development consent was not payable until compensation was also payable in respect of injurious affection caused by the scheme. In other words, it was not payable until the scheme came into operation, when it became payable as an addendum to the scheme compensation. To be payable at all, however, the interim development application had to be taken on appeal to the Minister and it was only on the Minister's refusal that an addendum could be made to the probable future claim under the scheme (see s. 18 (2) of the 1932 Act; 25 Halsbury's Statutes 492).

To avoid the necessity of such an appeal the interim development authority might, if they thought fit, make a contribution towards any damage or expense which they were satisfied the applicant had suffered by reason of their decision (s. 10 (4) of the 1932 Act; 25 Halsbury's Statutes 483). These provisions were applied to revocations or modifications of consents made under s. 4 of the 1943 Act (36 Halsbury's Statutes 244). Under that section the interim development authority might make a contribution and the revocation was to be deemed to be an application for permission which had been dismissed on appeal to the Minister for the purposes of s. 18 (2) of the 1932 Act, *supra*.

The present section provides for the making of regulations under which payments may be made to former interim development authorities in respect of contributions made by such authorities under s. 10 (4) of the 1932 Act, *supra*, in connection with applications for development dealt with since May 11, 1943, or in respect of revocations or modifications under s. 4 of the 1943 Act, *supra*, provided such contributions have the effect of reducing the development value of land under Part VI, *ante* (see the proviso to s. 61 (4), *ante*) in this regard.

Under s. 7 (2) of the 1943 Act (36 Halsbury's Statutes 248) the interim development authority were under obligation to pay compensation in respect of expenditure rendered abortive by reason of any revocation or modification of permission. The present regulations will also provide for Exchequer contributions to be made in respect of sums paid under that section where the effect has been to reduce the development value of the land. In respect of compensation for expenditure rendered abortive by the revocation of pre-1943 consents by the passing of the present Act, see ss. 79 and 94, *ante*.

*Regulations.*—For the general provisions applicable to regulations under the Act, see s. 111, *post*. Note the provisions of sub-s. (1), *ante*, as to Treasury consent.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*S. 10 (4) of the Act of 1932.*—25 Halsbury's Statutes 483.

*Town and Country Planning (Interim Development) Act, 1943.*—36 Halsbury's Statutes 239. For ss. 4 and 7 (2) thereof, see 36 Halsbury's Statutes 244, 248.

*Development value.*—See s. 61 (1), *ante*. The development value of land is the difference between the restricted value and the unrestricted value of the land in question as there set forth.

*Appointed day.*—This means such day as the Minister of Town and Country Planning may by order appoint (see ss. 119 (1) and 120, *post*). July 1, 1948, has been so appointed (S.I. 1948 No. 213).

*Joint committee.*—As to the establishment of joint committees, see ss. 3 and 4 of the 1932 Act (25 Halsbury's Statutes 473, 474), s. 9 of the 1943 Act (36 Halsbury's Statutes 249) and s. 40 of the 1944 Act (37 Halsbury's Statutes 466).

*Definitions.*—As to "develop," see ss. 12, *ante*, and 119 (1), *post*. For definitions of "local authority," "interim development authority," "Act of 1932" and "land," see s. 119 (1), *post*.

**97. Power of Ministers to contribute towards compensation paid by local authorities.**—Where compensation is payable by a local authority under this Act in consequence of any decision or order given or made under Part III of this Act (including compensation payable in respect of land compulsorily acquired by virtue of section nineteen of this Act) then if that decision or order was given or made wholly or partly in the interest of any service which is provided by a government department and the cost of which is defrayed out of moneys provided by Parliament or out of the road fund, the Minister responsible for the administration of that service may pay to that authority, out of moneys so provided, a contribution of such amount as he may, with the consent of the Treasury, determine. [2637]

*Effect of section.*—Where a local authority incur liability to pay compensation under the control of development provisions by reason of a decision made for the benefit of any government department, the Minister responsible for that department may make a contribution towards such compensation.

*Local authority.*—See s. 119 (1), *post*. See also s. 34, *ante*, whereby liabilities of local planning authorities may be delegated to other local authorities.

*Government department.*—This term includes the Electricity Commissioners (s. 119 (1), *post*).

*Road fund.*—This fund was established by s. 3 of the Roads Act, 1920 (19 Halsbury's Statutes 87). See also in this connection 23 Halsbury's Statutes 670, 684; 29 Halsbury's Statutes 772.

**98. Power of local authorities and statutory undertakers to contribute towards expenses of local planning authorities, etc.**—(1) Any local authority and any statutory undertakers may contribute towards—

- (a) any expenses incurred by a local planning authority in or in connection with the carrying out of a survey or the preparation of a development plan under Part II of this Act ;
- (b) any expenses incurred by a local planning authority, or by the council of any county district, in or in connection with the performance of any of their functions under Part III or Part IV of this Act. [2638]

(2) Where any expenses are incurred by a local authority in the payment of compensation payable in consequence of anything done under Part III of this Act (including any compensation payable in respect of land compulsorily acquired by virtue of section nineteen of this Act), the Minister may, if it appears to him to be expedient so to do, require any other local authority to contribute towards those expenses such sum as appears to him to be reasonable having regard to any benefit accruing to that authority by reason of the proceeding giving rise to the compensation. [2639]

(3) The provisions of the last foregoing subsection shall apply in relation to payments made by a local authority to any statutory undertakers in accordance with financial arrangements to which effect is given under paragraph (c) of subsection (2) of section twenty-six of the Act of 1944, as they apply in relation to compensation payable by such an authority in consequence of anything done under Part III of this Act, and the reference in that subsection to the proceeding giving rise to the compensation shall be construed accordingly. [2640]

(4) For the purposes of this section, contributions made by a local planning authority towards the expenditure of a joint advisory committee shall be deemed to be expenses incurred by that authority for the purposes for which that expenditure is incurred by the committee. [2641]

*Effect of section.*—Any local authority or statutory undertakers may contribute towards the expenses of the local planning authority in the preparation of the development plan.

Many of the features of the plan and some aspects of the survey may be the result of representations made by other local authorities when consulted by the local planning authority under s. 10 (1), *ante*. Much other work will be done at the behest of statutory undertakers. It is therefore proper that such bodies should be enabled to contribute to cost. Under s. 5, *ante*, it is the local planning authority which promotes the plan and the designations for compulsory purchase ; but under ss. 37 and 38, *ante*, the acquisition of the designated land will mostly be by other local authorities and by statutory undertakers.

The same applies to expenses incurred by the local planning authority or the council of any county district in respect of action under Parts III and IV of the Act, *ante*.

Where expenses are incurred under Part III, *ante*, in respect of compensation (including compensation in respect of land acquired consequent on a purchase notice under s. 19, *ante*) by any local authority and the action giving rise to the compensation confers benefit on some other local authority the Minister may require that other authority to contribute towards the expenses incurred. The sections in Part III under which compensation can arise are ss. 19, 20, 22, 27, 28, 29 and 32, *ante*. This provision will also apply to any financial arrangement under s. 26 (2) (c) of the 1944 Act (see Sched. XI, *post*) made as a result of action taken in respect of the property or rights of statutory undertakers under Part III, *ante*.

*Carrying out of survey ; preparation of a development plan.*—See s. 5, *ante*.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*If it appears to him, etc.*—See note to s. 4, *ante*, on the phrase "If it appears to the Minister." s. 26 (2) (c) of the Act of 1944.—37 Halsbury's Statutes 455. This paragraph, in slightly amended form, appears in Sched. XI, *post*.

*Joint advisory committee.*—As to the powers of local planning authorities with the approval of the Minister to concur in establishing joint advisory committees, see s. 4, *ante*, and Sched. I, Part III, *post*.

*Definitions.*—As to "local planning authority," see ss. 4, *ante*, and 119 (1), *post* ; and as to "development plan," see ss. 5, *ante*, and 119 (1), *post*. For definitions of "local authority" and "statutory undertakers," see s. 119 (1), *post*.

**99. Expenses of county councils.**—The council of any county may direct that any expenses incurred by them under this Act shall be treated as expenses for special county purposes chargeable upon such part of the county as may be specified in the directions. [2642]

*Special country purposes.*—S. 180 (1) of the Local Government Act, 1933 (26 Halsbury's Statutes 404), provides that in Part VIII of that Act, and in every other enactment relating to the expenses of county councils, unless the context otherwise requires, this expression means any purposes for expenditure on which part only of the county is chargeable, whether by reason of any part of the county being exempt therefrom or otherwise.

In determining the amount of expenses for any particular special county purpose, a proper proportion of the cost of the officers and buildings and establishment of the county council may be added to the expenses directly incurred for that purpose (Local Government Act, 1933, s. 180 (3); 26 Halsbury's Statutes 405).

## PART X

### SUPPLEMENTAL

#### *Supplementary provisions as to local planning authorities*

**100. Default powers of Minister.**—(1) If it appears to the Minister, after consultation with the local planning authority, to be expedient that an enforcement notice should be served under section twenty-three of this Act, or under that section as applied by any order or regulations under Part III of this Act, or that a notice should be served under section thirty or section thirty-three of this Act, in respect of any land, he may give directions to the local planning authority requiring them to serve such a notice, or may himself serve such a notice, and any notice so served by the Minister shall have the like effect as a notice served by the local planning authority :

Provided that in relation to an enforcement notice so served by the Minister, section twenty-four of this Act shall have effect as if for reference therein to the local planning authority there were substituted a reference to the Minister. [2643]

(2) If it appears to the Minister, after consultation with the local planning authority, to be expedient that any of the following orders should be made under Part III of this Act, that is to say :—

- (a) an order under section twenty-one of this Act revoking or modifying any permission to develop land ;
- (b) an order under the said section twenty-one as applied by any order or regulations under Part III of this Act ;
- (c) an order under section twenty-six of this Act requiring any use of land to be discontinued, or imposing conditions on the continuance thereof, or requiring any buildings or works on land to be altered or removed ;
- (d) a tree preservation order, or an order amending or revoking a tree preservation order ; or
- (e) a building preservation order, or an order amending or revoking a building preservation order,

he may give directions to the local planning authority requiring them to submit to him such an order for his confirmation, or may himself make such an order, and any order so made by the Minister shall have the like effect as if it had been made by the local planning authority and confirmed by the Minister under Part III of this Act. [2644]

(3) In relation to the making by the Minister of any order under the last foregoing subsection, the provisions of Part III of this Act, and of any regulations made thereunder, with respect to the procedure to be followed in connection with the submission of such an order by the local planning authority, the confirmation thereof by the Minister, and the service of copies thereof as so confirmed, shall have effect, subject to any necessary modifications, in relation to any proposal by the Minister to make the order, to the making thereof by the Minister and to the service of copies thereof as so made. [2645]



(4) If the Minister is satisfied, after holding a local inquiry,—

- (a) that the council of any county borough or county district have failed to take steps for the acquisition of any land which in the opinion of the Minister ought to be acquired by that council under section thirty-eight of this Act for the purpose of securing its use in the manner proposed by the development plan or, during the period before a development plan has become operative under this Act with respect to the area of that council, for the purpose of securing the proper planning of that area ; or
- (b) that any local authority have failed to carry out, on land acquired by them under the said section thirty-eight, or appropriated by them under section forty-two of this Act, any development which in the opinion of the Minister ought to be carried out ;

the Minister may by order require the council or authority to take such steps as may be specified in the order for acquiring the land or carrying out the development, as the case may be. [2646]

(5) Any order under the last foregoing subsection shall be enforceable, on the application of the Minister, by mandamus. [2647]

*Effect of section.*—After consultation with the local planning authority, the Minister may direct the exercise of any of their powers under Part III, *ante*, or may exercise those powers himself. After a local inquiry he may by order direct any county borough or county district council to acquire land under s. 38, *ante*, and may direct any local authority to develop land which they have acquired under that section or have appropriated under s. 42, *ante*. Such an order is enforceable by *mandamus*. For the default powers of the Minister in relation to development plans, see s. 7, *ante*.

*Position of London.*—For the special provisions as to London, see s. 114, *post*.

*If it appears to the Minister.*—See note to s. 4, *ante*, on these words.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Consultation.*—"The word 'consultation' is one that is in general use and that is well understood. No useful purpose would, in my view, be served by formulating words of definition. Nor would it be appropriate to seek to lay down the manner in which consultation must take place. The Act does not prescribe any particular form of consultation. If a complaint is made of failure to consult, it will be for the court to examine the facts and circumstances of the particular case and to decide whether consultation was, in fact, held" (*Fletcher v. Minister of Town and Country Planning*, [1947] 2 All E. R. 496, *per* MORRIS, J., at p. 500).

The case last quoted was decided under s. 1 of the New Towns Act, 1946 (39 Halsbury's Statutes 664), but these observations appear to be applicable to the duty to consult imposed by this section.

*Local planning authority.*—Sees s. 4, *ante*, and notes thereto. As to delegation of powers under Part III, *ante*, see s. 34, *ante*.

*Enforcement notice.*—See, generally, ss. 23 and 24, *ante*.

*Regulations under Part III.*—Up to the time of going to Press, no relevant regulations had been made under this Part of the Act.

*Ss. 30 and 33.*—See *ante*. These sections deal respectively with action in respect of the preservation of buildings of architectural or historic interest and the abatement of injury to amenity caused by the condition of vacant land.

*Serve a notice.*—See s. 105, *post*.

*Sub-s. (2).*—It is suggested that where any such order as is mentioned in this subsection, *ante*, is made on the directions of the Minister, the fact that the order has been so made should be recited in the order, particularly if the order is not one which the local planning authority would themselves have made had they not been directed by the Minister to make it.

*Tree preservation order.*—As to this type of order, see s. 28, *ante*.

*Building preservation order.*—See s. 29, *ante*, as to this type of order.

*After holding a local inquiry.*—For the provisions as to inquiries, see s. 104, *post*.

*In the opinion of the Minister.*—See note to s. 4, *ante*, on the words "If it appears to the Minister."

*Definitions.*—As to "develop" and "development," see ss. 12, *ante*, and 119 (1), *post*; and as to "development plan," see ss. 5, *ante*, and 119 (1), *post*. For definitions of "land," "use" and "buildings or works," see s. 119 (1), *post*. Other definitions are referred to in the notes *supra*.

**101. Transfer of property and officers to local planning authorities under this Act.**—(1) Regulations under this Act may make such provision consequential on or supplementary to the provisions of section four of this Act as appears to the Minister to be necessary or expedient, and in particular, but without prejudice to the generality of this section, such regulations may provide—

- (a) for the transfer to local planning authorities of property and liabilities of councils of county districts, being property and liabilities held



or incurred for the purposes of the exercise, under the enactments relating to town and country planning in force before the appointed day, of functions corresponding with the functions of local planning authorities under this Act;

- (b) for the transfer to local planning authorities, or to the constituent authorities of joint planning committees, of property and liabilities of such committees;
- (c) for the transfer to local planning authorities of officers employed by councils of county districts immediately before the appointed day, being officers so employed solely or mainly for the purposes of any such functions as aforesaid, and of officers employed by joint planning committees;
- (d) for enabling any proceedings pending on the appointed day with respect to any such functions as aforesaid, or with respect to any property or liabilities transferred by virtue of the regulations, to be carried on by or against local planning authorities or the constituent authorities of joint planning committees, as the case may be;
- (e) for the making of adjustments between local planning authorities or the constituent authorities of joint planning committees, on the one hand, and the councils of county districts or joint planning committees on the other hand in relation to property and liabilities transferred by virtue of the regulations, including the making of payments by such authorities, councils and committees; and
- (f) for the determination of questions arising in relation to the matters to which the regulations relate. [2648]

(2) Regulations made for the purposes of this section shall provide for the payment of compensation, subject to such exceptions and conditions as may be prescribed by the regulations, by such authorities as may be so prescribed—

- (a) to officers who, immediately before the appointed day, were employed by local planning authorities, by the councils of county districts, and by joint planning committees, and who suffer loss of employment or loss or diminution of emoluments which is attributable to the provisions of this Act or of the regulations; and
- (b) to officers who, having before the appointed day been employed in any such employment as aforesaid, would have been in that employment immediately before that day but for any war service in which they have been engaged. [2649]

(3) In this section the expression “joint planning committee” means a joint committee appointed or constituted under the Act of 1932 or under any previous enactment relating to town planning; the expression “officer” includes servant; and the expression “war service” means service in any of His Majesty’s forces and such other employment as may be prescribed by regulations made for the purposes of this section. [2650]

*Regulations.*—As to regulations generally, see s. 111, *post*, and notes thereto.

*As appears to the Minister.*—See note to s. 4, *ante*, on the words “If it appears to the Minister.”

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Appointed day.*—This means such day as the Minister of Town and Country Planning may by order appoint (see ss. 119 and 120, *post*). July 1, 1948, has been so appointed (S.I. 1948 No. 213).

*Functions.*—This includes powers and duties (s. 119 (1), *post*).

*Officers.*—The word “officer” includes servant; see sub-s. (3), *supra*.

*Mainly.*—This means “for the most part,” “chiefly,” “principally” (*Miller v. Othilie Owners*, [1944] K. B. 188; [1944] 1 All E. R. 277, C. A., *per* LUXMOORE, L.J.).

*Emoluments.*—In the Local Government Act, 1933, s. 305 (26 Halsbury’s Statutes 466), the word “emoluments” is defined as follows:—

“Emoluments” includes all salary, wages, fees, poundage and other payments paid or made to an officer as such for his own use, including the money value of any apartments, rations or other allowances in kind appertaining to his office, but does not include payments for overtime or any sum paid to him to cover travelling expenses, cost of office accommodation, assistance of deputies, or clerical, or other assistance.”

This definition is, however, for the purposes of the Local Government Act, 1933, and does not apply to the present Act, which contains no definition of the term. Note, however, that a similar definition to that quoted appears in s. 8 (1) of the Compensation of Displaced Officers (War Service) Act, 1945 (38 Halsbury's Statutes 304), though here again the definition is not exhaustive.

In *R. v. Postmaster-General* (1876), 1 Q. B. D. 658; *affirmed* (1878), 3 Q. B. D. 428, it was held that the word "emolument" means all by which the officer has benefited. Where he has a fixed salary, or where he has a remuneration for his services, the emolument would be that by which he made a profit. Travelling allowances can therefore be taken into consideration and the question would be whether the officer derived any annual profit or advantage from them.

Recent examples of the use of the term "emoluments" may be found in the Police Act, 1946, ss. 10 and 11 (39 Halsbury's Statutes 625, 626), and the Fire Services Act, 1947, Sched. V, para. 14 (see title FIRE PROTECTION, *ante*).

*Would have been.*—It will doubtless be assumed (unless there are some very exceptional circumstances) that an officer, not due for retirement before the appointed day, "would have been in that employment," if he left that employment to engage in war service.

*Joint planning committee.*—This term is defined in sub-s. (3), *ante*. As to the references to the "Act of 1932 or . . . any previous enactment relating to town planning," see ss. 3 and 4 of the 1932 Act (25 Halsbury's Statutes 473, 474), s. 9 of the 1943 Act (36 Halsbury's Statutes 249) and s. 40 of the 1944 Act (37 Halsbury's Statutes 466).

*War service.*—It may well be that the additional war service to be prescribed by regulations for the purposes of the present section will be essentially similar to that allowed by the Minister of Health under s. 14 (1) of the Local Government Staffs (War Service) Act, 1939 (32 Halsbury's Statutes 1128). Note that this provision was applied by s. 8 (1) of the Compensation of Displaced Officers (War Service) Act, 1945, *supra*.

*Definitions.*—As to "local planning authority," see ss. 4, *ante*, and 119 (1), *post*. For definition of "enactment," see s. 119 (1), *post*. Other definitions are referred to in the notes *supra*.

### General Provisions

**102. Applications for planning permission, determination of development charges, etc.**—(1) An application to a local planning authority for planning permission under Part III of this Act, and an application to the Central Land Board for the making or confirmation of any determination under Part VII of this Act, shall be made in such manner as may be prescribed by regulations under this Act and shall include such particulars and shall be verified by such evidence as may be required by the regulations or by any directions given by local planning authority or the Board thereunder. [2651]

(2) Subject to the following provisions of this section, regulations made under this Act may provide for the combination in a single document, made in such form and transmitted to such authority as may be prescribed by the regulations, of—

- (a) an application for planning permission in respect of any development ;
- (b) an application for a determination of the Central Land Board in respect of that development ;
- (c) any submission or application required to be made to a local authority in respect of that development under any enactment specified in the regulations. [2652]

(3) Any regulations made for the purposes of this section which relate to any such application or submission as is mentioned in paragraph (c) of the last foregoing subsection shall be made by the Minister and the Minister of Health, after consultation with such local authorities or associations of local authorities as appear to them to be concerned ; and different provision may be made by such regulations in relation to areas in which different enactments are in force. [2653]

(4) An application or submission required to be made to a local authority under any enactment specified in such regulations as aforesaid shall, if made in accordance with the provisions of the regulations, be deemed to be valid notwithstanding anything in that enactment prescribing or enabling any authority to prescribe the form in which or the manner in which such an application or submission is to be made, but without prejudice to the validity of any application or submission made in accordance with that enactment, and without prejudice to any provision of that enactment enabling any such authority to require further particulars of the matters to which the application or submission relates. [2654]

*Effect of section.*—As regards applications for planning permission, this section should be read together with s. 14, *ante*, and as regards applications to the Central Land Board for the making or confirmation of any determination under Part VII, *ante*, with ss. 70 and 72.

The provisions contained in sub-s. (2), *ante*, are designed to obviate the necessity for a number of separate applications. A combined form of application will be prescribed.

Under the previous law, applications were often made for permission in principle before submitting plans showing the precise development in detail. This course, though it had disadvantages, had the advantage of saving the expense of preparing plans before it was known whether the development was of a kind which the authority would be prepared to accept.

By sub-s. (8), *ante*, different provisions may be made by the regulations in relation to areas in which different enactments are in force. The term "enactment" includes not only an enactment in any local or private Act of Parliament, but also an order, rule, regulation, bye-law or scheme made under an Act of Parliament (s. 119 (1), *post*). The provisions in the regulations could thus vary considerably in relation to different areas.

This section does not apply to applications under s. 17, *ante*, in Part III of the Act to determine whether planning permission is required, but there should be no difficulty in combining such an application with an application to which this section does apply (see s. 17 (1), *ante*).

The Minister has stated in Town and Country Planning Circular 37/47, that he intends to make regulations under the present section for all planning applications to be made in the first place to the county district council for the area. This will avoid confusion where differing delegation arrangements have been made under s. 34, *ante*. The district council will either deal with the application under the terms of the delegation, if any, or pass it to the county council.

*Local planning authority.*—See s. 4, *ante*, and Sched. I, *post*. For special provisions as to London, see s. 114, *post*.

*Central Land Board.*—See s. 2 and Part VII, *ante*.

*Regulations.*—As to regulations generally, see s. 111, *ante*, and notes thereto.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Consultation.*—See note to s. 100, *ante*.

*As appear to them.*—See note to s. 4, *ante*, on the words "If it appears to the Minister."

*Definitions.*—As to "planning permission" and "development," see ss. 12, *ante*, and 119 (1), *post*. For definitions of "local authority" and "enactment," see s. 119 (1), *post*.

**103. Powers of entry.**—(1) Any person duly authorised in writing by the Minister or by a local planning authority may, at any reasonable time, enter upon any land for the purpose of surveying it in connection with—

- (a) the preparation, approval, making or amendment of a development plan relating to the land under Part II of this Act, including the carrying out of any survey under the said Part II ;
- (b) any application under Part III of this Act, or under any order or regulations made thereunder, for any permission, consent or determination to be given or effected in relation to that or any other land under the said Part III or under any such order or regulations ;
- (c) any proposal by the local planning authority or by the Minister to serve or make any notice or order under the said Part III or under any such order or regulations as aforesaid ;

and any person being an officer of the Valuation Office or a person duly authorised in writing by a local planning authority may, at any reasonable time, enter upon any land for the purpose of surveying it or estimating its value in connection with any claim for compensation payable by that authority in respect of that or any other land under Part III or Part VIII of this Act.

[2655]

(2) Any officer of the Valuation Office, or any person duly authorised in writing by a Minister having power to acquire land designated by a development plan under this Act as subject to compulsory acquisition, or to authorise the acquisition of land so designated, and any person being an officer of the Central Land Board or a person duly authorised in writing by a local authority having power to acquire land under Part IV of this Act, may, at any reasonable time, enter upon any land for the purpose of surveying it or estimating its value in connection with any proposal to acquire that or any other land or in connection with any claim for compensation in respect of any such acquisition. [2656]

(3) Any officer of the Valuation Office or of the Central Land Board may, at any reasonable time, enter upon any land for the purpose of surveying it or estimating its value in connection with—

- (a) any claim for a payment in respect of that or any other land under Part VI of this Act ;
- (b) any determination of the Board in respect of that or any other land under Part VII of this Act. [2657]

(4) A person authorised under this section to enter upon any land shall, if so required, produce evidence of his authority before so entering, and shall not demand admission as of right to any land which is occupied unless twenty-four hours notice of the intended entry has been given to the occupier. [2658]

(5) Any person who wilfully obstructs a person acting in the exercise of his powers under this section shall be liable on summary conviction to a fine not exceeding twenty pounds. [2659]

(6) If any person who, in compliance with the provisions of this section, is admitted into a factory, workshop or workplace discloses to any person any information obtained by him therein as to any manufacturing process or trade secret, he shall, unless the disclosure is made in the course of performing his duty in connection with the survey or estimate for which he was authorised to enter the premises, be liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months. [2660]

(7) Where any land is damaged in the exercise of a power of entry conferred under this section, or in the making of any survey for the purpose of which any such power of entry has been so conferred, compensation in respect of that damage may be recovered by any person interested in the land from the Minister, Board or authority on whose behalf the entry was effected. [2661]

(8) Any expenses incurred by a Minister or the Central Land Board under the last foregoing subsection shall be defrayed out of moneys provided by Parliament. [2662]

(9) Any power conferred by this section to survey land shall be construed as including power to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals therein :

Provided that a person shall not carry out any works authorised by this subsection unless notice of his intention so to do has been included in the notice required by subsection (4) of this section, and if the land in question is held by any statutory undertakers and those undertakers object to the proposed works on the ground that the carrying out thereof would be seriously detrimental to the carrying on of their undertaking, the works shall not be carried out except with the authority of the appropriate Minister. [2663]

*Requiring information.*—For power to require information as to ownership, see s. 106, *post*.

*Any person.*—The person duly authorised need not be an officer of the local planning authority or the Ministry. This is understandable as local planning authorities may employ consultants.

*Duly authorised.*—The giving of the authority would appear to be a “ ministerial act ” which might be delegated to an officer of the planning authority, but planning authorities may be well advised not to take any risk and to give the authority themselves.

As the authority under this section must take the form of a document to be issued or given by the local planning authority, the Minister could prescribe the form of the document by virtue of his powers under s. 111, *post*.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*). This should be distinguished from “ a Minister ” and “ appropriate Minister ” in later subsections of the present section.

*For the purpose of surveying.*—Note that by sub-s. (9), *supra*, the power to survey includes the power to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals therein. The term “ minerals ” is defined in s. 119 (1), *post*.

*Valuation Office.*—This means the Valuation Office of the Inland Revenue Department (s. 119 (1), *post*).

*Central Land Board.*—For the constitution and functions of the Board, see ss. 2 and 3, *ante*.

*Sub-s. (4).*—In view of the terms of this subsection it will be inadvisable to enter upon land without first notifying the owner or occupier of the intention to enter. If he refuses permission to enter immediately, the twenty-four hours notice mentioned should be given.

*Sub-s. (6).*—As the maximum term of imprisonment on summary conviction does not exceed

three months, the accused has no right to claim trial by jury under s. 17 of the Summary Jurisdiction Act, 1879 (11 Halsbury's Statutes 329).

*Powers of entry.*—The powers given by the present section may be compared with those conferred by s. 287 of the Public Health Act, 1936 (29 Halsbury's Statutes 507), whereby duly authorised officers of councils are empowered, on producing their authority, to enter any premises at all reasonable hours for the purposes of that section, subject to a proviso that admission to any premises not being a factory, workshop, or workplace, is not to be demanded as of right unless twenty-four hours' notice of the intended entry has been given to the occupier.

S. 343 of the same Act (29 Halsbury's Statutes 536) defines "authorised officer" by reference to general or special authorisation, but there is no express provision in the present Act allowing general authorisation.

*Definitions.*—As to "local planning authority," see ss. 4, *ante*, and 119 (1), *post*; and as to "development plan," see ss. 5, *ante*, and 119 (1), *post*. For definitions of "land," "a Minister," "local authority," "statutory undertakers," and "appropriate Minister," see s. 119 (1), *post*. Other definitions are referred to in the notes *supra*.

**104. Local inquiries.**—The Minister may cause a local inquiry to be held for the purpose of the exercise of any of his functions under this Act; and the provisions of subsections (2) to (5) of section two hundred and ninety of the Local Government Act, 1933 (which relate to the giving of evidence at, and defraying the cost of, local inquiries) shall have effect with respect to any such inquiry as if the Minister were a department for the purposes of that section. [2664]

*Effect of section.*—This section confers on the Minister a general power to cause a local inquiry to be held for the purpose of the exercise of any of his functions. There are a few provisions in the Act which oblige the Minister, before making certain orders, to hold a local inquiry, but there are a number of other provisions which require him to afford an oral hearing. Provisions for other local inquiries and oral hearings will doubtless be made by the regulations which the Minister is authorised to make under the Act. Under the previous law it has been the practice of the Minister, when he has been obliged to afford an oral hearing, to direct a local inquiry to be held.

For cases relating to inquiries of this kind, see *Re London-Portsmouth Trunk Road (Surrey) Compulsory Purchase Order (No. 2)*, 1938, [1939] 2 K. B. 515; [1939] 2 All E. R. 464; *Franklin v. Minister of Town and Country Planning*, [1948] A. C. 87; [1947] 2 All E. R. 289, *post*; *Rollo v. Minister of Town and Country Planning*, [1948] 1 All E. R. 13, C. A.; and *Fletcher v. Minister of Town and Country Planning*, [1947] 2 All E. R. 496, *post*.

*Inspector's report.*—The Inspector's report is a departmental document and its contents need not be (and are not in practice) disclosed to parties or other persons interested in the subject of the inquiry (see *William Denby & Sons, Ltd. v. Minister of Health*, [1936] 1 K. B. 337, following *Local Government Board v. Arlidge*, [1915] A. C. 120).

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Functions.*—This term includes powers and duties (s. 119 (1), *post*).

*Local Government Act, 1933, s. 290 (2)-(5).*—26 Halsbury's Statutes 459.

**105. Service of notices.**—(1) Subject to the provisions of this section, any notice or other document required or authorised to be served or given under this Act may be served or given either—

- (a) by delivering it to the person on whom it is to be served or to whom it is to be given; or
- (b) by leaving it at the usual or last known place of abode of that person, or, in a case in which an address for service has been furnished by that person, at that address; or
- (c) by sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode, or, in a case in which an address for service has been furnished by that person, at that address; or
- (d) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at their registered or principal office, or sending it in a prepaid registered letter addressed to the secretary or clerk of the company or body at that office.

[2665]

(2) Where the notice or document is required or authorised to be served on any person as having an interest in premises, and the name of that person cannot be ascertained after reasonable inquiry, or where the notice or document is required or authorised to be served on any person as an occupier of premises, the notice shall be deemed to be duly served if—

- (a) being addressed to him either by name or by the description of "the owner" or "the occupier," as the case may be, of the premises (describing them) it is delivered or sent in the manner prescribed by paragraph (a), (b) or (c) of the last foregoing subsection; or
- (b) being addressed as aforesaid and marked in such manner as may be prescribed by regulations under this Act for securing that it shall be plainly identifiable as a communication of importance, it is sent in a prepaid registered letter to the premises and is not returned to the authority sending it, or is delivered to some person on those premises or is affixed conspicuously to some object on those premises.
- [2666]**

(3) Where the notice or other document is required to be served on or given to all persons having interests in, or being occupiers of, premises comprised in any land, and it appears to the authority required or authorised to serve or give the notice or other document that any part of that land is unoccupied, the notice shall be deemed to be duly served on all persons having interests in, and on any occupiers of, premises comprised in that part of the land (other than a person who has furnished that authority with an address for the service of the notice on him) if it is addressed to "the owners and any occupiers" of that part of the land (describing it), and is affixed conspicuously to some object on the land. **[2667]**

*Other document.*—See *R. v. Mead*, [1894] 2 Q. B. 124 (summons held to be); *R. v. Braithwaite*, [1918] 2 K. B. 319 (summons held to be, following *R. v. Mead*); *R. v. Hastings JJ., Ex parte Mitchell* (1925), 89 J. P. Jo. 86 (summons).

*Last known place of abode.*—See *Hanrott's Trustees v. Evans* (1887), 4 T. L. R. 128 (person with no permanent place of abode); *R. v. Farmer*, [1892] 1 Q. B. 637, C. A. (last place of abode: distinction between person who has gone abroad and is wandering about and person who has gone abroad and is not merely wandering about but has got a fixed place of abode abroad); *R. v. Webb*, [1896] 1 Q. B. 487 (last place of abode).

*Registered letter.*—By s. 26 of the Interpretation Act, 1889 (18 Halsbury's Statutes 1002), it is enacted as follows:—

"Where an Act passed after the commencement of this Act authorises or requires any document to be served by post, whether the expression 'serve,' or the expression 'give' or 'send,' or any other expression is used, then, unless the contrary intention appears, the service shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the document, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post."

In this case, however, there is the additional requirement that the letter must be registered. As to necessity for proving repayment of postage, see *Walthamstow U.D.C. v. Henwood*, [1897] 1 Ch. 41.

*Principal office.*—This is the place where the business of the company is managed and controlled as a whole (*Garton v. Great Western Ry. Co.* (1858), 27 L. J. Q. B. 375; *Pulmer v. Caledonian Ry. Co.*, [1892] 1 Q. B. 823; *Clokey v. London North Western Ry. (Ir.)*, [1905] 2 I. R. 251).

*Sub-s. (2).*—The methods specified in this subsection are applicable:—

1. Where the notice or other document is required to be served on any person as having an interest in premises, and the name of that person cannot be ascertained after reasonable inquiry; and

2. Where the notice or other document is required or authorised to be served on any person as an occupier of the premises.

*Sub-s. (2) (b).*—Under a similar provision in the 1944 Act (s. 54; 37 Halsbury's Statutes 473), the regulations required that any notice or other document served in this manner must at the beginning of such notice or document have clearly and legibly inscribed upon it, in the following form, the words: IMPORTANT—This communication affects YOUR PROPERTY.

See also p. 991, *post*.

*Regulations.*—For the general provisions applicable to regulations, see s. 111, *post*.

*Sub-s. (3).*—Note that it suffices for the purpose of this subsection if it appears to the authority that any part of the land is unoccupied, in which case a notice posted on the site will be sufficient, except in the case of those persons who have furnished the authority with an address for service.

*Definitions.*—For definitions of "owner" and "land," see s. 119 (1), *post*.

**106. Power to require information as to ownership of land.**—The Minister, the Central Land Board or a local authority may, for the purpose of enabling them to make any order or serve any notice or other document which they are by this Act authorised or required to make or serve, require the occupier of any premises and any person who, either directly or indirectly, receives rent



in respect of any premises, to state in writing the nature of his interest therein and the name and address of any other person known to him as having an interest therein, whether a freeholder, mortgagee, lessee or otherwise; and any person who, having been required in pursuance of this section to give any information, fails to give that information, or knowingly makes any misstatement in respect thereof, shall be liable on summary conviction to a fine not exceeding five pounds. [2668]

*General note.*—Note that the power conferred by this section is solely for the purpose of enabling the Minister, the Central Land Board or the local authority to serve any notice or other document which they are authorised or required by the Act to make or serve.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Central Land Board.*—For the constitution and functions of the Board, see ss. 2 and 3, *ante*.

*Serve any notice.*—For the general provisions applicable to service of notices, see s. 105, *ante*.

*Definitions.*—For definition of “local authority,” see s. 119 (1), *post*. Though “mortgage” and “lease” are defined in that subsection, “mortgagee” and “lessee” are not expressly defined.

**107. Provisions as to Ecclesiastical property.**—(1) Without prejudice to the provisions of the Acquisition of Land (Authorisation Procedure) Act, 1946, with respect to notices served under that Act, where under this Act any notice is required to be served on an owner of land, and the land is ecclesiastical property, a like notice shall be served on the Ecclesiastical Commissioners. [2669]

(2) Where the fee simple in any ecclesiastical property is in abeyance, it shall be treated for the purposes of a compulsory purchase of the property under Part IV of this Act as being vested in the Ecclesiastical Commissioners, and any notice to treat shall be served, or be deemed to have been served, accordingly. [2670]

(3) Any compensation payable under Part III or Part VIII of this Act in respect of land which is ecclesiastical property, and any payment falling to be made in respect of such land under Part VI of this Act, shall be paid to the Ecclesiastical Commissioners to be applied for the purposes for which the proceeds of a sale by agreement of the land would be applicable under any enactment or Measure authorising such a sale or disposing of the proceeds of such a sale. [2671]

(4) Where a development charge is payable under Part VII of this Act in respect of land which is ecclesiastical property, the Ecclesiastical Commissioners may apply any money or securities held by them in the payment of that charge. [2672]

(5) In this section the expression “ecclesiastical property” means land belonging to any ecclesiastical benefice, or being or forming part of a church subject to the jurisdiction of a bishop of any diocese or the site of such a church, or being or forming part of a burial ground subject to such jurisdiction. [2673]

*Effect of section.*—This section is an extension of s. 52 of the 1944 Act (37 Halsbury's Statutes 473), and is designed to remove uncertainties in connection with the disposal of Church of England property such as glebe land, consecrated churches and churchyards.

Where there is an incumbent or other owner any notice required to be served on the owner must also be served on the Church Commissioners for England (sub-s. (1), *supra*, and see the notes *infra*).

Where there is no incumbent or other owner the fee simple is treated for the purposes of compulsory purchase as vested in the said Church Commissioners and any notice to treat must be served on them. In cases where notice to treat is not served, but is deemed to have been served either under this Act or the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Halsbury's Statutes 52), it will be deemed to have been served on the said Church Commissioners (sub-s. (2), *supra*).

Compensation on compulsory purchase in respect of ecclesiastical property will be paid to the said Church Commissioners, as will also any payments made under Part VI of the present Act (sub-s. (3), *supra*).

Sub-s. (4), *supra*, relates to the payment of development charges by the said Church Commissioners, and sub-s. (5) defines “ecclesiastical property.”

*Acquisition of Land (Authorisation Procedure) Act, 1946.*—39 Halsbury's Statutes 52.



See para. 3 (2) and (3) of Sched. I and also paras. 3 (2) and 5 of Sched. II to that Act (39 Halsbury's Statutes 63, 67).

*Ecclesiastical Commissioners.*—On April 1, 1948, the day appointed by the Archbishop of Canterbury, the Ecclesiastical Commissioners were dissolved, and their functions, rights and privileges transferred to the Church Commissioners for England established under the Church Commissioners Measure, 1947, ss. 1 and 2 (40 Halsbury's Statutes 393).

*Part III.*—See *ante*. This Part of the Act comprises the control of development provisions. See ss. 20, 22, 27, 28, 29 and 32, *ante*.

*Part VIII.*—See, in particular, s. 79, *ante*.

*Development charge.*—See s. 69, *ante*.

*Definitions.*—For definitions of "owner" and "land," see s. 119 (1), *post*.

**108. Expenses of tribunals, etc.**—(1) The Minister may pay to the chairman and members of any tribunal established for the purposes of this Act, or of regulations made thereunder, such remuneration (whether by way of salaries or by way of fees) and such reasonable allowances in respect of expenses properly incurred in the performance of their duties, as the Treasury may determine. [2674]

(2) Any expenditure incurred by the Minister under the last foregoing subsection, or in the payment of the expenses of any committee established under section thirty-one of this Act, shall be defrayed out of moneys provided by Parliament. [2675]

*General note.*—Instances in which a tribunal may be appointed are under s. 16 (4), *ante* (appeal from decisions of planning authority relating to the design or external appearance of buildings or other similar matters); s. 31 (2), *ante* (appeal from decisions of planning authority on applications for consent to display advertisements), and s. 81 (3), *ante* (variation of mining leases).

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Committee . . . under s. 31.*—See *ante*. This section relates to the control of advertisements, and sub-s. (1) (e) thereof authorises the constitution of advisory committees in that connection.

**109. Expenses of Ministers.**—There shall be paid out of moneys provided by Parliament—

- (a) any expenses incurred by a Minister in the acquisition of land under Part IV of this Act, other than expenses so incurred which are required to be defrayed out of the road fund;
- (b) any sums payable into the road fund for the purpose of defraying expenses of the Minister of Transport under this Act;
- (c) any sums authorised or required to be paid out of moneys provided by Parliament by virtue of any of the provisions of the Act of 1944 incorporated with Part IV of this Act;
- (d) any administrative expenses incurred by the Minister for the purposes of this Act. [2676]

*A Minister; the Minister.*—Note the distinction between these terms which are defined in s. 119 (1), *post*. "The Minister" is the Minister of Town and Country Planning (ss. 1, *ante*, and 119 (1), *post*).

*Road fund.*—This fund was established by s. 3 of the Roads Act, 1920 (19 Halsbury's Statutes 87). See also in this connection 23 Halsbury's Statutes 670, 684; 26 Halsbury's Statutes 891; and 29 Halsbury's Statutes 772.

*Definitions.*—For definitions of "land" and "Act of 1944," see s. 119 (1), *post*.

**110. Determination of disputes as to compensation, etc.**—(1) Except so far as otherwise provided by this Act or by any regulations or order made thereunder, any question of disputed compensation under this Act (other than compensation payable in respect of the compulsory acquisition of land) shall be determined in the same manner as compensation on the acquisition of land falls to be determined under the Acquisition of Land (Assessment of Compensation) Act, 1919, and sections one, three, five, six and eight of that Act shall accordingly have effect subject to any necessary modifications and to the provisions of any such regulations as aforesaid. [2677]

(2) Any dispute arising under any provisions of this Act in relation to any land as to what is the use which prevails generally in the case of contiguous or adjacent land shall, if application in that behalf is made by any party to the dispute within such time and in such manner as may be prescribed by

regulations made under this Act, be referred to and determined by the Central Land Board. [2678]

(3) Any party to any such dispute as aforesaid who is dissatisfied with the determination of the Central Land Board may, within such time and in such manner as may be prescribed by regulations made under this Act, appeal to the Minister, whose decision shall be final. [2679]

*Effect of section.*—The effect of sub-s. (1), *ante*, is that disputes as to compensation in respect of planning restrictions in the limited number of cases in which any compensation is to be payable will be referred to the official arbitrator to be determined under the Acquisition of Land (Assessment of Compensation) Act, 1919 (2 Halsbury's Statutes 1176).

As to sub-s. (2), *ante*, see the provisions contained in ss. 82, 84 and 85, *ante*.

*Acquisition of Land (Assessment of Compensation) Act*, 1919, ss. 1, 3, 5, 6 and 8.—2 Halsbury's Statutes 1176, 1179, 1180, 1181.

*Contiguous or adjacent.*—See note to s. 5, *ante*.

*Regulations.*—For the general provisions as to regulations, see s. 111, *post*.

*Central Land Board.*—For the constitution and functions of the Board, see ss. 2 and 3, *ante*.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Definitions.*—For definitions of "land" and "use," see s. 119 (1), *post*.

**111. Regulations and orders.**—(1) The Minister may make regulations under this Act—

(a) for prescribing the form of any notice, order or other document authorised or required by this Act to be served, made or issued by any local authority;

(b) for any purpose for which regulations are authorised or required to be made under this Act, not being a purpose for which such regulations are authorised or required to be made by any other Minister, and in particular for prescribing anything which by this Act is required or authorised to be prescribed by regulations. [2680]

(2) Any regulations made under this Act (other than regulations which, by virtue of any provision of this Act, are of no effect unless they are approved by resolution of each House of Parliament) shall be laid before Parliament immediately after they are made, and if either House, within the period of forty days after the regulations are so laid before it, resolves that the regulations be annulled, the regulations shall thereupon cease to have effect, but without prejudice to the validity of anything previously done thereunder or to the making of new regulations. [2681]

(3) In reckoning for the purpose of the last foregoing subsection any such period of forty days, no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days. [2682]

(4) Any power to make an order conferred by this Act shall include power to amend or revoke that order by a subsequent order:

Provided that an order made by the Minister for the purposes of paragraph 6 of the Third Schedule to this Act shall not be amended or revoked at any time after the appointed day. [2683]

(5) Notwithstanding anything in subsection (4) of section one of the Rules Publication Act, 1893, regulations, orders and schemes made under this Act shall be deemed not to be, or to contain, statutory rules to which that section applies. [2684]

*General note.*—A regulation made under statutory authority has the same force as a statute if validly made (*R. v. Walker* (1875), L. R. 10 Q. B. 355; *Kayley v. Hothersall*, [1925] 1 K. B. 607; *SS. Hontestroom v. SS. Sagaprock*, *SS. Hontestroom v. SS. Durham Castle*, [1927] A. C. 37).

If there is a conflict between the regulations and the Act which cannot be reconciled, the regulations must yield to the Act (*Minister of Health v. R., Ex parte Yaffé*, [1931] A. C. 494).

Where the words of an Act under which the regulations are made or to which the regulations refer are repeated *totidem verbis* in the regulations, they must bear the same interpretation as in the Act (see the Interpretation Act, 1889, s. 31 (18 Halsbury's Statutes 1003); and *Potts (or Riddell) v. Reid*, [1943] A. C. 1; [1943] 2 All E. R. 161, H. L.).

By s. 32 (3) of the Interpretation Act, 1889 (18 Halsbury's Statutes 1003), it is provided as follows :—

"Where an Act passed after the commencement of this Act confers a power to make any rules, regulations, or byelaws, the power shall, unless a contrary intention appears, be construed as including a power, exercisable in the like manner and subject to the like consent and conditions, if any, to rescind, revoke, amend, or vary the rules, regulations, or byelaws."

Note the omission of orders from the above enactment, an omission supplied by sub-s. (4), *ante*.

See note to s. 13, *ante*, as to the effect of the Statutory Instruments Act, 1946 (39 Halsbury's Statutes 783).

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Local authority.*—For definition, see s. 119 (1), *post*.

*Para. 6 of Sched. III.*—See *post*. This provision enables the Minister by order to direct that certain uses of a general class shall be included in "existing use for all purposes." Such an order will limit the development value (see s. 61, *ante*) which may be claimed in respect of such an interest, since the owner will be entitled to compensation under s. 20 or 27, *ante*, should future limitation of the development be necessary. Since development value is determined at the appointed day this proviso ensures that the alternative of compensation will remain secured.

*Appointed day.*—This means such day as the Minister of Town and Country Planning may by order appoint (see ss. 119 and 120, *post*). July 1, 1948, has been so appointed (S.I. 1948 No. 213).

*Rules Publication Act, 1893.*—18 Halsbury's Statutes 1016 ; see also the Statutory Instruments Act, 1946 (39 Halsbury's Statutes 783).

**112. Assumptions as to permission for development.**—(1) For the avoidance of doubt it is hereby declared that where, under any provision of this Act, the value of any interest in land is required to be assessed on the assumption that planning permission under Part III of this Act would be granted for development of any class specified in the Third Schedule to this Act, that assumption is to be made on the footing that any such development must comply with the provisions of any enactment, other than this Act, which would be applicable thereto. [2685]

(2) For the purposes of paragraph 3 of the said Third Schedule, the erection on land within the curtilage of any such building as is mentioned in that paragraph of an additional building to be used in connection with the original building shall be treated as the enlargement of the original building ; and where on the appointed day any two or more buildings comprised in the same curtilage are used as one unit for the purposes of any institution or undertaking, the reference in the said paragraph 3 to the cubic content of the original building shall be construed as a reference to the aggregate cubic content of those buildings. [2686]

(3) Any reference in the said Third Schedule to the cubic content of a building shall be construed as a reference to that content as ascertained by external measurement. [2687]

*General note.*—Sub-s. (1) of the section should be read together with s. 61, *ante* (ascertainment of development values of land).

Sub-ss. (2) and (3) should be read together with para. 3 of Sched. III, *post*.

*Sched. III.*—See *post*. This Schedule defines the development included in the existing use.

*Enactment.*—The word "enactment" is defined by s. 119 (1), *post*, to include "an enactment" in any local or private Act of Parliament and an order, rule, regulation, byelaw or scheme made under an Act of Parliament.

*Para. 3 of Sched. III.*—See *post*. This paragraph provides a certain tolerance to existing use by way of enlargement or alteration.

*Curtilage.*—See note to s. 12, *ante*.

*Appointed day.*—This means such day as the Minister of Town and Country Planning may by order appoint (see ss. 119 (1) and 120, *post*). July 1, 1948, has been so appointed (S.I. 1948 No. 213).

*Definitions.*—As to "planning permission" and "development," see ss. 12, *ante*, and 119 (1), *post*. For definitions of "land," "erection" and "building," see s. 119 (1), *post*. Other definitions are referred to in the notes *supra*.

**113. Amendments and repeals.**—(1) Subject to the provisions of this section, the enactments specified in the first column of the Eighth Schedule to this Act shall have effect, on and after the appointed day, subject to the amendments specified in the second column of that Schedule, being minor amendments and amendments consequential on the provisions of this Act. [2688]

(2) Subject to the provisions of this section, the enactments specified in the Ninth Schedule to this Act are hereby repealed in the case of enactments specified in Part I of that Schedule, as from the passing of this Act, and in the case of the enactments specified in Part II of that Schedule, as from the appointed day, to the extent specified in relation thereto in the third column of that Schedule :

Provided that the repeal by virtue of this subsection of any enactment specified in Part I of the said Ninth Schedule shall not affect the operation of that enactment in its application to compensation in respect of land compulsorily acquired in pursuance of a notice to treat served before the date of the passing of this Act or compensation in respect of any order or direction made or given before that date. [2689]

(3) The repeal or amendment by virtue of this Act of any enactment contained in Part I or Part III of the Act of 1944 (other than an enactment specified in Part I of the Ninth Schedule to this Act) shall not affect the operation of that enactment as applied by the New Towns Act, 1946, but without prejudice to any amendment of the last-mentioned Act effected by this Act. [2690]

(4) His Majesty may by Order in Council repeal or modify so much of any local enactment in force on the appointed day as confers or imposes any such powers, prohibitions or restrictions as could be conferred or imposed by regulations made under section thirty-one of this Act :

Provided that any Order in Council made under this subsection shall be subject to special parliamentary procedure. [2691]

(5) Without prejudice to the provisions of section thirty-eight of the Interpretation Act, 1889 (which relates to the effect of repeals), the provisions of the Tenth Schedule to this Act (being transitory and consequential provisions) shall have effect in relation to the repeals effected by this section. [2692]

(6) In accordance with the foregoing provisions of this section, the Act of 1944 shall, as from the appointed day, have effect as set out in the Eleventh Schedule to this Act. [2693]

*Dates of operation.*—See s. 120, *post*, as to the coming into operation of this section.

*Sub-s. (1).*—Most of the amendments effected by this Act are consequential, but special attention is drawn to the amendments of ss. 6, 7 and 20 of the Betting and Lotteries Act, 1934 (27 Halsbury's Statutes 276, 278, 287).

*Appointed day.*—This means such day as the Minister of Town and Country Planning may by order appoint (s. 119, *post*). July 1, 1948, has been so appointed (S.I. 1948 No. 213).

*Passing of this Act.*—August 6, 1947.

*Sub-s. (3).*—The repeals and amendments to the 1944 Act, apart from those relating to the assessment of compensation upon the compulsory acquisition of land by reference to 1939 prices, are not to affect that Act as applied by the New Towns Act, 1946 (39 Halsbury's Statutes 661).

*Sub-s. (4).*—This is an example of the delegation of legislative powers to His Majesty, but note the proviso. The whole of the present Act affords an interesting study in delegated legislation. See, further, the notes to s. 111, *ante*.

*Regulations made under s. 31.*—See *ante*. S. 31 empowers the Minister to make regulations as to the control of advertisements.

*Special parliamentary procedure.*—See the notes to s. 5, *ante*.

*Interpretation Act, 1889, s. 38.*—18 Halsbury's Statutes 1005.

*Definitions.*—For definitions of "enactment," "land" and "Act of 1944," see s. 119 (1), *post*.

**114. Special provisions as to London.**—(1) The local planning authority for the administrative county of London shall be the London County Council. [2694]

(2) In relation to land in the administrative county of London, sections nineteen, thirty-eight, thirty-nine and one hundred of this Act shall have effect as if for references therein to the council of the county borough or county district in which the land is situated there were substituted references—

(a) in the case of land in the City of London, to the Common Council of that City ;

(b) in the case of any other land, to the London County Council,

and sections twenty-nine, thirty, forty, forty-one and ninety-eight of this Act and the Sixth and Tenth Schedules to this Act shall have effect as if any reference therein to the council of any county borough or county district included a reference to the Common Council of the City of London and to the council of any metropolitan borough. [2695]

(3) The power of a local planning authority to make agreements under section twenty-five of this Act may be exercised also—

(a) in relation to land in the City of London, by the Common Council of that City ; and

(b) in relation to land in a metropolitan borough, by the council of that borough with the consent of the London County Council,

and references in that section to a local planning authority shall be construed accordingly. [2696]

(4) The council of a metropolitan borough shall not, except with the consent of the London County Council, be authorised to acquire land compulsorily under subsection (3) of section thirty-eight of this Act. [2697]

(5) Without prejudice to the powers conferred by section thirty-seven of this Act, or by section thirty-eight of this Act as modified by the last foregoing subsection, if the Minister of Health is satisfied that it is expedient in the public interest that any land within a metropolitan borough (whether designated by a development plan as subject to compulsory acquisition or not) should be acquired by the council of that borough for the purpose of providing a public open space, he may authorise that council to acquire that land compulsorily ; and the Acquisition of Land (Authorisation Procedure) Act, 1946, except section two of that Act, shall apply to the compulsory acquisition of land under this subsection as if this subsection had been in force immediately before the commencement of that Act :

Provided that before submitting a compulsory purchase order to the Minister of Health under this subsection, the council of a metropolitan borough shall consult with the London County Council. [2698]

(6) Any reference in this Act, or in the Act of 1944 as incorporated with Part IV of this Act, to the said Part IV shall be construed as including a reference to the last foregoing subsection. [2699]

(7) In relation to land in the administrative county of London section forty-two of this Act shall have effect as if for the reference therein to section one hundred and sixty-three of the Local Government Act, 1933, there were substituted a reference to section one hundred and six of the London Government Act, 1939, and the Second Schedule to this Act shall have effect as if there were included therein a reference to section one hundred and forty of the Public Health (London) Act, 1936. [2700]

(8) For the purposes of section forty-eight of this Act the appropriate council, in relation to land in the administrative county of London, shall be—

(a) in the case of land in the City of London, the Common Council of that City ;

(b) in the case of any other land, the council of the metropolitan borough in which the land is situated,

and in relation to any such land the said section forty-eight shall have effect as if for references therein to the Public Health Act, 1875, and sections one hundred and fifty and one hundred and fifty-one of that Act there were substituted, in the case of land in the City of London, references to the City of London Sewers Acts, 1848 to 1897, and to sections one hundred and

twenty-six to one hundred and twenty-eight of the City of London Sewers Act, 1848, and in the case of any other land references to the Metropolis Management Acts, 1855 to 1893, and to section one hundred and five of the Metropolis Management Act, 1855, section seventy-seven of the Metropolis Management Amendment Act, 1862, and the Metropolis Management Act, 1862, Amendment Act, 1890. [2701]

(9) References in section one hundred and one of this Act to the council of a county district shall be construed as including references to the Common Council of the City of London. [2702]

(10) In relation to land in the City of London, the London County Council may delegate to the Common Council of the City any of their functions under regulations made under section thirty-one of this Act with respect to the control of advertisements, and shall delegate to that Council, in accordance with regulations made under this Act, such of their functions in relation to applications for planning permission under Part III of this Act as may be prescribed by the regulations; and regulations made for the purposes of this subsection may make provision for any matters for which provision may be made by regulations made for the purposes of section thirty-four of this Act. [2703]

(11) Without prejudice to the provisions of the last foregoing subsection, the London County Council shall—

- (a) before submitting to the Minister a development plan relating to land in the City of London, or proposals for alterations or additions to any such plan;
- (b) before determining any application for planning permission relating to such land; and
- (c) before making a tree preservation order or building preservation order affecting any such land,

consult with the Common Council of the City. [2704]

(12) In relation to land in any metropolitan borough, the London County Council may delegate to the council of that borough any of their functions under regulations made under section thirty-one of this Act with respect to the control of advertisements, and shall—

- (a) before submitting to the Minister a development plan relating to any such land, or proposals for alterations or additions to such a plan;
- (b) before determining any application for planning permission for the development of any such land, being an application of any such class as may be prescribed by the development order;
- (c) before making a tree preservation order or a building preservation order affecting any such land,

consult with the council of that borough. [2705]

(13) The class of applications for planning permission prescribed by a development order for the purposes of paragraph (b) of the last foregoing subsection shall be such class as appears to the Minister to involve matters of principle; and where an application of any class so prescribed is referred to the Minister for determination in pursuance of directions given by him under section fifteen of this Act, the London County Council shall give notice to that effect to the council of the metropolitan borough in which the land to which the application relates is situated, and the Minister shall, in dealing with the application, take into account any representations made to the London County Council by the council of that borough. [2706]

(14) The Common Council of the City of London may borrow money for the purposes of this Act under the City of London Sewers Acts, 1848 to 1897, and any expenses incurred by that Council under this Act shall be defrayed as part of their general expenses. [2707]



*Effect of section.*—By virtue of this section the London County Council become the local planning authority for the whole of the administrative county of London, including the City of London (sub-s. (1), *ante*).

The London County Council are required to delegate to the Common Council of the City of London (with respect to land in the City), in accordance with regulations made under the Act, such of their functions in relation to applications for planning permission as may be prescribed by the regulations (sub-s. (10), *ante*).

The London County Council may delegate in respect of land in the City of London to the Common Council, and in respect of land in a metropolitan borough to the council of that borough any of their functions under regulations made under s. 31 in respect of the control of advertisements (sub-ss. (10) and (12), *ante*).

By sub-s. (11), *ante*, the London County Council is to consult with the Common Council:—

(a) before submitting to the Minister a development plan relating to land in the City of London or proposals for alterations or additions to any such plan;

(b) before determining any application for planning permission relating to any such land; and

(c) before making a tree preservation order or building preservation order affecting any such land.

Similar provision for consultation is made in the case of metropolitan boroughs (sub-s. (12)), though in case (b), *supra*, the requirement is somewhat more limited (sub-ss. (12) (b) and (13), *ante*).

The powers under Part IV (Acquisition of Land, etc.), *ante*, are conferred on the Common Council as regards land in the City of London, and on the London County Council as regards the rest of the county.

Metropolitan boroughs are given a new power to acquire land compulsorily for open spaces, but before they submit an order for compulsory purchase (in this case to the Minister of Health) they must consult with the London County Council (sub-s. (5), *ante*).

The council of a metropolitan borough is not, except with the consent of the London County Council, to be authorised to acquire land compulsorily under s. 38 (3), *ante* (sub-s. (4), *ante*).

*If the Minister of Health is satisfied.*—See note to s. 4, *ante*, on the phrase “If it appears to the Minister.”

*Acquisition of Land (Authorisation Procedure) Act, 1946.*—39 Halsbury's Statutes 52. For s. 2 thereof, which confers temporary powers of speedy acquisition in cases of urgency, see 39 Halsbury's Statutes 56.

*Commencement of that Act.*—The date of commencement of the Acquisition of Land (Authorisation Procedure) Act, 1946, *supra*, was April 18, 1946, the date of the Royal Assent.

*Local Government Act, 1933, s. 163.*—26 Halsbury's Statutes 396.

*London Government Act, 1939.*—32 Halsbury's Statutes 259. For s. 106, relating to the appropriation of land, see 32 Halsbury's Statutes 310.

*Public Health (London) Act, 1936, s. 140.*—30 Halsbury's Statutes 522.

*Public Health Act, 1875.*—13 Halsbury's Statutes 623. For ss. 150 and 151 thereof, see 13 Halsbury's Statutes 686, 687.

*City of London Sewers Act, 1848.*—11 & 12 Vict. c. clxiii.

*Metropolis Management Act, 1855, s. 105.*—11 Halsbury's Statutes 909.

*Metropolis Management Amendment Act, 1862, s. 77.*—11 Halsbury's Statutes 986.

*Metropolis Management Act, 1862, Amendment Act, 1890.*—11 Halsbury's Statutes 1012.

*Tree preservation order.*—See s. 28, *ante*.

*Building preservation order.*—See s. 29, *ante*.

*Definitions.*—As to “local planning authority,” see ss. 4, *ante*, and 119 (1), *post*; as to “development plan,” see ss. 5, *ante*, and 119 (1), *post*; and as to “planning permission,” see ss. 12, *ante*, and 119 (1), *post*. For definitions of “land,” “Act of 1944,” “functions,” and “advertisement,” see ss. 119 (1), *post*.

**115. Application to Isles of Scilly.**—The Minister shall, after consultation with the council of the Isles of Scilly, by order provide for the application of this Act to the Isles of Scilly as if those Isles were a separate county, and any such order may provide for the application of this Act to those Isles subject to such modifications as may be specified in the order. [2708]

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Consultation.*—See note to s. 100, *ante*, on the subject of consultations.

**116. Exercise of functions of Board of Trade.**—Anything required or authorised under this Act to be done by, to or before the Board of Trade may be done by, to or before the President of the Board, any secretary, under-secretary or assistant secretary of the Board or any person authorised in that behalf by the President of the Board. [2709]

*General note.*—The Board of Trade means the lords of the committee for the time being of the Privy Council appointed for the consideration of matters relating to trade and foreign plantations (Interpretation Act, 1889, s. 12 (8); 18 Halsbury's Statutes 995). The Board of Commissioners never meets in fact, the responsible heads of the department being the President and the Parliamentary Secretary of the Board. This section, which it has been the custom for many years to insert in Acts conferring powers on the Board of Trade, arises from the obscurity of the Board's position and is designed to establish the validity of acts done by certain responsible persons on behalf of the Board.



**117. Saving for Postmaster General.**—(1) Subject to the provisions of this section, and to the provisions of subsection (4) of section twenty-three of the Act of 1944 as applied by this Act, nothing in this Act or in any order or regulations made thereunder shall affect any powers or duties of the Postmaster General under the provisions of the Telegraph Acts, 1863 to 1943, or apply to any telegraphic lines placed or maintained by virtue of any of those provisions. [2710]

(2) Where in pursuance of an order made by the Minister of Transport under section forty-nine of this Act any highway is stopped up or diverted and, immediately before the date on which the order became operative, there was under, in, upon, over, along or across the highway any telegraphic line belonging to or used by the Postmaster General, the Postmaster General shall have the same powers in respect of that line as if the order had not become operative :

Provided that if any person entitled to land over which the highway subsisted requires that the telegraphic line should be altered, paragraphs (1) to (8) of section seven of the Telegraph Act, 1878, shall apply to the alteration and accordingly shall have effect, subject to any necessary modifications, as if references therein to undertakers included references to the person so requiring the line to be altered. [2711]

(3) Where any order made under the said section forty-nine provides for the improvement of any highway, not being a trunk road, and, immediately before the date on which the order became operative, there was under, in, upon, over, along or across the highway any telegraphic line belonging to or used by the Postmaster General, then if the local highway authority require that that line should be altered, paragraphs (1) to (8) of the said section seven shall apply to the alteration and accordingly shall have effect, subject to any necessary modifications, as if references therein to undertakers included references to the local highway authority. [2712]

(4) In this section the expressions “alter” and “telegraphic line” have the same meanings as in the Telegraph Act, 1878. [2713]

*S. 23 (4) of the 1944 Act.*—For this enactment, see Sched. XI, *post*.

*Telegraph Acts, 1863 to 1943.*—These include the Telegraph Acts, 1863 to 1925 (19 Halsbury's Statutes 210–316) ; the Post Office and Telegraph Act, 1940 (33 Halsbury's Statutes 351) ; and the Telegraph Act, 1943 (36 Halsbury's Statutes 307).

*Telegraphic lines.*—The term “telegraphic line” is defined by s. 2 of the Telegraph Act, 1878 (19 Halsbury's Statutes 261), as meaning “telegraphs, posts, and any work (within the meaning of the Telegraph Act, 1863) and also any cables, apparatus, pneumatic or other tube, pipe, or thing whatsoever used for the purpose of transmitting telegraphic messages or maintaining telegraphic communication, and includes any portion of a telegraphic line as defined by this Act.” By sub-s. (4), *supra*, this definition is applied for the purposes of the present Act.

*S. 49 of this Act.*—See *ante*. This is the lengthy section at the end of Part IV which deals with the power to stop up and divert highways and similar matters.

*Should be altered.*—The term “alter” is defined by s. 2 of the Telegraph Act, 1878 (19 Halsbury's Statutes 261), in this clause :

“The expressions ‘alteration,’ ‘alter,’ and ‘altering’ in respect of a telegraphic line, include the substitution of any new line or portion of a line, either in the same place or in some other place, also any removal of or other dealing with any telegraphic line or any part of such line.”

By sub-s. (4), *supra*, the definition of “alter” as set out above is applied for the purposes of the present Act.

*Telegraph Act, 1878, s. 7, paras. (1) to (8).*—19 Halsbury's Statutes 265 *et seq.* This section lays down general rules as to work which involves alteration in a telegraphic line. Where any such work is proposed and provision with respect thereto is not otherwise made by enactment, agreement or otherwise, the enactments in the eight paragraphs of the section apply ; it is these provisions which, with minor adaptations, are expressly applied to the alterations referred to in sub-s. (2), *supra*.

*Trunk road.*—As to trunk roads, see ss. 1, 2 and 13 (1) of the Trunk Roads Act, 1936 (29 Halsbury's Statutes 185, 187, 200), and ss. 1 and 2 of the Trunk Roads Act, 1946 (39 Halsbury's Statutes 151, 152).

*Telegraph Act, 1878.*—19 Halsbury's Statutes 261 *et seq.* See also the notes *supra*.

*Definitions.*—For definitions of “land,” “improvement” (in relation to a highway) and “local highway authority,” see s. 119 (1), *post*.

**118. Application to land regulated by special enactments.**—(1) For the avoidance of doubt it is hereby declared that the provisions of this Act, and

any restrictions or powers thereby imposed or conferred in relation to land, apply and may be exercised in relation to any land notwithstanding that provision is made by any enactment in force at the passing of this Act, or by any local Act passed at any time during the present Session of Parliament, for authorising or regulating any development of the land. [2714]

(2) Without prejudice to the generality of the foregoing provision, references in any enactment contained in a local Act (including any such Act passed as aforesaid) to Part II of the Town and Country Planning Act, 1944, shall be construed—

- (a) in relation to compensation payable on a compulsory acquisition of land thereunder in pursuance of a notice to treat served before the passing of this Act, as a reference to the said Part II as amended by this Act;
- (b) in relation to compensation payable on a compulsory acquisition of land thereunder in pursuance of a notice to treat served after the passing of this Act, as a reference to Part V of this Act:

Provided that no such enactment shall, by virtue of this subsection, be construed as excluding the application of the said Part V in relation to compensation payable in respect of any compulsory acquisition of land. [2715]

*General note.*—This section deals with the position of land where special enactments apply. In cases where development has been authorised or can be authorised by some other Act in force on August 6, 1947, application for permission to develop under the present Act must still be made.

*Passing of this Act.*—August 6, 1947.

*Town and Country Planning Act, 1944, Part II.*—37 Halsbury's Statutes 476 *et seq.* This Part of the 1944 Act comprises ss. 57–62 thereof and relates to compensation in connection with the acquisition of land for public purposes. By ss. 113, *ante*, and 120 and Sched. IX, Part I, *post*, these sections are repealed as from the passing of the present Act, and accordingly they do not appear in Sched. XI, *post*, which reproduces the unrepealed provisions of the 1944 Act in their amended form.

As to modifications of the said Part II in cases where it continues to apply (sub-s. (2) (a), *supra*), see s. 50, *ante*, and Sched. VII, *post*.

*Notice to treat.*—See s. 18 of the Lands Clauses Consolidation Act, 1845 (2 Halsbury's Statutes 1120), incorporated in the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Halsbury's Statutes 52).

*Definitions.*—As to “development,” see ss. 12, *ante*, and 119 (1), *post*. For definitions of “land” and “enactment,” see s. 119 (1), *post*.

**119. Interpretation.**—(1) In this Act, except so far as the contrary is provided or the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:—

“Act of 1932” means the Town and Country Planning Act, 1932;

“Act of 1944” means the Town and Country Planning Act, 1944;

“advertisement” means any word, letter, model, sign, placard, board, notice, device or representation, whether illuminated or not, in the nature of and employed wholly or in part for the purposes of advertisement, announcement or direction, and without prejudice to the foregoing provision includes any hoarding or similar structure used or adapted for use for the display of advertisements, and references to the display of advertisements shall be construed accordingly;

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and “agricultural” shall be construed accordingly;

“appointed day” means such day as the Minister may by order appoint;

“appropriate Minister” means—

(a) in relation to statutory undertakers carrying on an undertaking for the supply of electricity, gas or hydraulic power, the Minister of Fuel and Power ;

(b) in relation to statutory undertakers carrying on an undertaking for the supply of water, the Minister of Health ; and

(c) in relation to any other statutory undertakers as defined by this Act, the Minister of Transport ;

“area of extensive war damage” and “area of bad lay-out or obsolete development” mean an area consisting of land shown to the satisfaction of the Minister to have sustained war damage or, as the case may be, to be badly laid out or of obsolete development, or consisting of such land together with other land contiguous or adjacent thereto, being in each case land comprised in an area which is defined by a development plan as an area of comprehensive development ;

“building” includes any structure or erection and any part of a building as so defined, but does not include plant or machinery comprised in a building ;

“buildings or works” includes waste materials, refuse and other matters deposited on land, and references to the erection or construction of buildings or works shall be construed accordingly ;

“building operations” includes rebuilding operations, structural alterations of or additions to buildings, and other operations normally undertaken by a person carrying on business as a builder ;

“building preservation order” has the meaning assigned to it by section twenty-nine of this Act ;

“clearing”, in relation to land, means the removal of buildings or materials from the land, the levelling of the surface of the land, and the carrying out of such other operations in relation thereto as may be prescribed by regulations made for the purposes of this Act ;

“common”, “open space” and “fuel or field garden allotment” have the same meanings as in the Acquisition of Land (Authorisation Procedure) Act, 1946 ;

“Consolidated Fund” means the Consolidated Fund of the United Kingdom, and includes the growing produce thereof ;

“development” has the meaning assigned to it by section twelve of this Act, and “develop” shall be construed accordingly ;

“development order” has the meaning assigned thereto by section thirteen of this Act ;

“development plan” has the meaning assigned to it by section five of this Act, and includes a plan made under subsection (5) of that section ;

“enactment” includes an enactment in any local or private Act of Parliament and an order, rule, regulation, byelaw or scheme made under an Act of Parliament ;

“engineering operations” includes the formation or laying out of means of access to highways ;

“erection” in relation to buildings includes extension, alteration and re-erection ;

“functions” includes powers and duties ;

“government department” includes the Electricity Commissioners ;

“improvement”, in relation to a highway, has the same meaning as the expression “improvement of roads” has in Part II of the Development and Road Improvement Funds Act, 1909 ;

- “industrial building” has the same meaning as in the Distribution of Industry Act, 1945 ;
- “interim development authority” means a council or joint committee empowered by an interim development order to permit the development of land ;
- “interim development order” means an order made under subsection (1) of section ten of the Act of 1932 ;
- “land” means any corporeal hereditament, including a building as defined by this section, and in relation to the acquisition of land under Part IV of this Act includes any interest or right in or over land ;
- “lease” includes an underlease and an agreement for a lease or underlease, but does not include an option to take a lease or a mortgage, and “leasehold interest” means the interest of the tenant under a lease as so defined ;
- “local authority” means the council of a county, county borough, metropolitan borough or county district, the Common Council of the City of London and any other authority being a local authority within the meaning of the Local Loans Act, 1875, and includes any drainage board and any joint board or joint committee if all the constituent authorities are such local authorities as aforesaid ;
- “local highway authority” means a highway authority other than the Minister of Transport ;
- “local planning authority” has the meaning assigned to it by section four of this Act ;
- “means of access” includes any means of access, whether private or public, for vehicles or for foot passengers, and includes a street ;
- “minerals” includes all minerals and substances in or under land of a kind ordinarily worked for removal by underground or by surface working : provided that it shall not include peat cut for purposes other than sale ;
- “mining lease” means a lease, underlease, tenancy or licence (whether personal or by way of profit à prendre) conferring a right to win or work minerals ;
- “Minister” includes the Treasury, the Admiralty, the Board of Trade and any other government department ;
- “the Minister” has the meaning assigned to it by section one of this Act ;
- “mortgage” includes any charge or lien on any property for securing money or moneys worth ;
- “National Coal Board” means the National Coal Board established under the Coal Industry Nationalisation Act, 1946 ;
- “National Trust” means The National Trust for Places of Historic Interest or Natural Beauty incorporated by the National Trust Act, 1907 ;
- “operational land”, in relation to any statutory undertakers, means land which is used for the purpose of carrying on the undertakings of those undertakers and land in which an interest is held for that purpose, not being land which, in respect of its nature and situation, is comparable rather with land in general than with land which is used, or in which interests are held, for the purpose of the carrying on of statutory undertakings ;
- “owner”, in relation to any land, means, except in Part VI of this Act, a person, other than a mortgagee not in possession, who, whether in his own right or as trustee or agent for any other person, is entitled to receive the rack rent of the land or, where the land is not let at a rack rent, would be so entitled if it were so let, and, in

- Part VI of this Act, has the meaning assigned to it by section sixty-four of this Act ;
- “ permission granted for a limited period only ” has the meaning assigned to it by section fourteen of this Act ;
- “ planning permission ” means the permission for development which is required by virtue of section twelve of this Act ;
- “ planning scheme ” means a scheme under the Act of 1932 or any enactment repealed by that Act ;
- “ purchase notice ” has the meaning assigned to it by section nineteen of this Act ;
- “ relocation of population or industry ” means, in relation to an area of extensive war damage or an area of bad lay-out or obsolete development, the rendering available elsewhere than in that area, whether in an existing community or a community to be newly established, of accommodation for residential purposes or for the carrying on of business or other activities, together with all appropriate public services, facilities for public worship, recreation and amenity, and other requirements, being accommodation to be rendered available for persons or undertakings who are living or carrying on business or other activities in that area or who were doing so but by reason of war circumstances are no longer for the time being doing so, and whose continued or resumed location in that area would be inconsistent with the proper planning thereof ;
- “ replacement of open space ” means, in relation to an area of extensive war damage or an area of bad lay-out or obsolete development, the rendering of land available for use as an open space or otherwise in an undeveloped state in substitution for land in that area which is so used ;
- “ requisitioned land ” and “ period of requisition ” have the meanings assigned to them by section eighty-nine of this Act ;
- “ statutory undertakers ” means persons authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, or any undertaking for the supply of electricity, gas, hydraulic power or water, and “ statutory undertaking ” shall be construed accordingly ;
- “ tree preservation order ” has the meaning assigned to it by section twenty-eight of this Act ;
- “ use ”, in relation to land, does not include the use of land by the carrying out of any building or other operations thereon ;
- “ Valuation Office ” means the Valuation Office of the Inland Revenue Department ;
- “ war damage ” has the same meaning as in the War Damage Act, 1943. [2716]

(2) If any question arises, in relation to anything required or authorised to be done under this Act, which Minister was or is the appropriate Minister as defined by this section in relation to any statutory undertakers, that question shall be determined by the Treasury, and if any question so arises whether land of statutory undertakers is operational land as defined by this section, that question shall be determined by the Minister who is the appropriate Minister in relation to those undertakers. [2717]

(3) Words in this Act importing a reference to service of a notice to treat shall be construed as including a reference to the constructive service of such a notice which, by virtue of the Sixth Schedule to the Act of 1944, or of any other enactment, is to be deemed to be served. [2718]

(4) Any reference in this Act to the compensation payable in respect of the compulsory acquisition of land shall be construed as including a

reference to compensation to be estimated, in connection with the acquisition, for damage sustained by reason of the severing of the land from other land held therewith or otherwise injuriously affecting such other land, and compensation to be so estimated for disturbance or any other matter not directly based on the value of the land. [2719]

(5) References in this Act to any enactment shall be construed as references to that enactment as amended by any subsequent enactment including, except where the context otherwise requires, this Act. [2720]

*Town and Country Planning Act, 1932.*—25 Halsbury's Statutes 470. The whole of this Act is repealed as from the appointed day (see *infra*) by ss. 113, *ante*, and 120, *post*, and Sched. IX, Part II, *post*.

*Town and Country Planning Act, 1944.*—37 Halsbury's Statutes 420. This Act is modified by s. 50, *ante*, and Sched. VII, *post*, and by ss. 44 and 113, *ante*, and Sched. VIII, *post*. In addition large portions of it are repealed by ss. 113, *ante*, 120, *post*, and Sched. IX, Parts I and II, *post*. Its unrepealed provisions, as amended by the present Act, form Sched. XI, *post*.

Note the provisions of sub-s. (5), *supra*, whereby references to enactments in the present Act are to be construed as references to such enactments as amended by any subsequent enactment including (unless otherwise required by the context) the present Act. Hence, references to "the Act of 1944" are, in effect, usually to that Act as amended.

*Appointed day.*—This means such day as the Minister of Town and Country Planning may by order appoint.

On February 9, 1948, by the Town and Country Planning Act, 1947 (Appointed Day) Order, 1948, S.I. 1948 No. 213, the Minister of Town and Country Planning in exercise of his powers under the present section appointed July 1, 1948, as the day when the Act as a whole should come into force.

*Acquisition of Land (Authorisation Procedure) Act, 1946.*—S. 8 of this Act (39 Halsbury's Statutes 61) contains the following definitions which are applied by the present Act:—

" 'Common' includes any land subject to be enclosed under the Inclosure Acts, 1845 to 1882, and any town or village green."

" 'Open space' means any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground."

" 'Fuel or field garden allotment' means any allotment set out as a fuel allotment, or a field garden allotment, under an Inclosure Act."

For the Inclosure Acts, 1845 to 1882, see 2 Halsbury's Statutes 443 *et seq*.

*Electricity Commissioners.*—The Electricity Commissioners were appointed by the Electricity (Supply) Act, 1919, s. 1 (7 Halsbury's Statutes 754), for promoting, regulating and supervising the supply of electricity. The Electricity Act, 1947 (see title ELECTRICITY SUPPLY, *ante*), provides for their dissolution under the nationalised system of electricity supply which that Act was designed to implement.

*Development and Road Improvement Funds Act, 1909, Part II.*—9 Halsbury's Statutes 212 *et seq*. S. 8 (5) of this Act contains the following definitions:—

"For the purposes of this Part of this Act the expression 'improvement of roads' includes the widening of any road, the cutting off the corners of any road where land is required to be purchased for that purpose, the levelling of roads, the treatment of a road for mitigating the nuisance of dust, and the doing of any other work in respect of roads beyond ordinary repairs essential to placing a road in a proper state of repair; and the expression 'roads' includes bridges, viaducts and subways."

See also the Roads Act, 1920, s. 4, Sched. I (19 Halsbury's Statutes 88, 99); the Roads Improvement Act, 1925, ss. 2 and 4 (8) (9 Halsbury's Statutes 220, 223); and the Road Traffic Act, 1930, s. 57 (2) (23 Halsbury's Statutes 653).

*Distribution of Industry Act, 1945.*—38 Halsbury's Statutes 479. By s. 15 (1) of this Act (38 Halsbury's Statutes 486), "industrial building" means a building used or designed or suitable for use for the carrying on of any industrial process, as there defined.

S. 10 (1) of the Act of 1932.—The Town and Country Planning Act, 1932, s. 10 (1); 25 Halsbury's Statutes 482.

*Local Loans Act, 1875.*—12 Halsbury's Statutes 242. "Local authority" is defined by s. 34 of that Act as:—

"the justices of any county, liberty, riding, parts or division of a county in general or quarter sessions assembled, the council of any municipal borough, also any authority whatsoever having power to levy a rate, as in this Act defined, also any prescribed authority."

The terms "rate" and "prescribed" are defined by the same section.

*Coal Industry Nationalisation Act, 1946.*—39 Halsbury's Statutes 251. For the establishment of the National Coal Board, see s. 1 thereof (39 Halsbury's Statutes 256).

*National Trust Act, 1907.*—7 Edw. 7, c. cxxxvi.

*War Damage Act, 1943.*—36 Halsbury's Statutes 334. For the definition of "war damage," see s. 2 (1) thereof (36 Halsbury's Statutes 338).

*Sched. VI to the Act of 1944.*—Sched. VI to the Town and Country Planning Act, 1944 (37 Halsbury's Statutes 490), as amended by the present Act, is included in Sched. XI, *post*.

**120. Short title, commencement and extent.**—(1) This Act may be cited as the Town and Country Planning Act, 1947. [2721]

(2) This Act shall come into force on the appointed day :

Provided that—

- (a) sections two and three of this Act ; and
- (b) subsection (2) of section thirty-seven of this Act and subsection (2) of section thirty-eight of this Act, and any other provisions of Part IV of this Act which relate to the acquisition of land under either of those subsections ; and
- (c) Part V of this Act, so much of section ninety-one of this Act as relates to land acquired before the appointed day, subsection (2) of section one hundred and thirteen of this Act so far as it relates to Part I of the Ninth Schedule to this Act, and Part I of the said Ninth Schedule ;

shall come into force on the date of the passing of this Act. [2722]

(3) This Act (except section two and subsection (2) of section fifty-eight thereof) shall not extend to Scotland. [2723]

(4) This Act shall not extend to Northern Ireland. [2724]

*Appointed day.*—This means such day as the Minister of Town and Country Planning may by order appoint (s. 119 (1), *ante*). July 1, 1948, has been so appointed (see S.I. 1948 No. 213, and the notes to s. 119, *ante*).

*Part V of this Act.*—For this Part of the Act, see the title LAND, ACQUISITION, SALE, ETC., *OF, ante*.

*Passing of this Act.*—August 6, 1947.

## SCHEDULES

### Section 4

### FIRST SCHEDULE

### LOCAL ADMINISTRATION

#### PART I

#### JOINT PLANNING BOARDS

1. A joint planning board constituted by an order made under section four of this Act shall consist of such number of members as may be determined by the order, to be appointed by the constituent councils.

2. A joint planning board so constituted shall be a body corporate, with perpetual succession and a common seal and power to hold land for the purposes of their functions without licence in mortmain.

3. An order constituting a joint planning board and any order amending or revoking any order constituting a joint planning board—

- (a) may, without prejudice to the provisions of section two hundred and ninety-three of the Local Government Act, 1933 (which authorises the application of the provisions of that Act to joint boards), provide for regulating the appointment, tenure of office and vacation of office of members of the board, for regulating the meetings and proceedings of the board and for the payment of the expenses of the board by the constituent councils ;
- (b) may provide for the transfer and compensation of officers, the transfer of property and liabilities, and the adjustment of accounts and apportionment of liabilities ;
- (c) may contain such other provisions as appear to the Minister to be expedient for enabling the board to exercise their functions ; and
- (d) may apply to the board, with any necessary modifications and adaptations, any of the provisions of Parts II and III of this Schedule. [2725]

*General note.*—S. 4 (2), *ante*, empowers the Minister by order, if he thinks it expedient, to establish a joint planning board as the local planning authority for the areas of any two or more councils. The areas or parts of areas affected by such orders are to be known as united districts. Unless there is general consent, a local inquiry must first be held, and orders must be laid before Parliament.



By s. 4 (4), *ante*, the provisions of this Part of the present Schedule are to take effect with respect to the constitution of joint planning boards.

Compare and contrast the position with regard to joint planning committees (see ss. 96 and 101, *ante*, and the notes thereto).

*Order.*—For the general provisions applicable to orders under the Act, see s. 111, *ante*.

*Body corporate.*—By constituting a joint planning board a body corporate the authority is placed on a like footing to that of a county council who are a body corporate by statute (Local Government Act, 1933, s. 2 (2); 26 Halsbury's Statutes 307). The position of councils of county boroughs, who are also local planning authorities under s. 4 (1) of the present Act, is different; the council of a county borough is not incorporated but the inhabitants of the borough are incorporated to constitute a municipal corporation which is capable of acting by the council (see the Municipal Corporations Act, 1882, ss. 6, 7; 10 Halsbury's Statutes 577; and the Local Government Act, 1933, s. 17; 26 Halsbury's Statutes 313).

*Licence in mortmain.*—The Mortmain and Charitable Uses Acts, 1888 and 1891 (2 Halsbury's Statutes 385, 396), as amended by the Mortmain and Charitable Uses Act Amendment Act, 1892 (2 Halsbury's Statutes 398), prohibit the assurance of land to corporations except under Royal Licence or with statutory authority. Such authority is given to joint planning boards by para. 2, *ante*.

*Local Government Act*, 1933, s. 293.—26 Halsbury's Statutes 461.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Definitions.*—For definitions of "land" and "functions," see s. 119 (1), *ante*.

## PART II

### PLANNING COMMITTEES

4. A local planning authority may establish such planning committees as they think it expedient to establish for the efficient discharge of their functions as a local planning authority, and may authorise any such committee to exercise on their behalf any of those functions, except the power to borrow money or to levy or issue a precept for a rate.

5. A planning committee of a local planning authority may, subject to any restrictions imposed by the local planning authority,—

- (a) appoint such sub-committees constituted in such manner as the committee may determine; and
- (b) authorise any such sub-committee to exercise any of the functions of the committee on their behalf.

6. A majority of every planning committee of a local planning authority shall be members of the authority, and a majority of every sub-committee of any such committee shall be members either of the local planning authority or of the councils of county districts comprised in the area of that authority.

7. Any power conferred by this Part of this Schedule to establish or appoint committees or sub-committees, or to authorise such committees or sub-committees to exercise any functions, shall include power to dissolve or alter the constitution of such committees or sub-committees, and to revoke or vary any such authorisation. [2726]

*General note.*—By s. 4 (4), *ante*, the provisions of this Part of the Schedule are to have effect in regard to the establishment and functions of planning committees. Provision is made for the delegation of functions by local planning authorities to planning committees which may themselves delegate to sub-committees. Note that such sub-committees may cover different parts of the authorities' areas. Note also the wide scope for co-option, and the representation of county districts allowed by para. 6, *supra*.

*Borrowing of money.*—The Local Government Act, 1933, Part IX (26 Halsbury's Statutes 412 *et seq.*), sets out the general provisions as to borrowing applicable to local authorities, including county and county borough councils.

*County districts.*—This means non-county boroughs, urban districts and rural districts (ss. 1 and 305 of the Local Government Act, 1933; 26 Halsbury's Statutes 306, 466).

*Definitions.*—As to "local planning authority," see ss. 4 and 119 (1), *ante*. For definition of "functions," see s. 119 (1), *ante*.

## PART III

### JOINT ADVISORY COMMITTEES

8. Any two or more local planning authorities may, with the approval of the Minister, concur in establishing a joint advisory committee for the purpose of advising those authorities as to the preparation of development plans and generally as to the planning of development in their areas; and any such committee shall be constituted in such manner as may be determined by the authorities by whom it is established:

Provided that a majority of the members of any such committee shall be members of one or other of those authorities.

9. If it appears to the Minister to be expedient that a joint advisory committee of any two or more local planning authorities should be established in accordance with the last foregoing paragraph, he may, after consultation with those authorities, by order establish such a committee, and any such order may—

- (a) provide for the reference to the committee of such matters as may be specified in the order ;
- (b) make such incidental and consequential provisions (including provision for the payment of expenses of the committee and the transfer and compensation of officers) as appear to the Minister to be expedient.

10. Any power conferred by this Part of this Schedule to establish committees or to authorise such committees to exercise any functions shall include power to dissolve or alter the constitution of such committees, and to revoke or vary any such authorisation.

11. The provisions of this Part of this Schedule shall be in addition to and not in substitution for the provisions of the Local Government Act, 1933, with respect to the appointment by local authorities of joint committees. [2727]

*General note.*—By s. 4 (4), *ante*, the provisions of this Part of the present Schedule are to have effect with respect to the establishment and functions of joint advisory committees of local planning authorities. Power is here given to set up joint advisory committees, a bare majority of whose members need be members of the appointing authorities.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*Purpose of advising.*—Note that executive functions are withheld from joint advisory committees. As set out in para. 8, *ante*, the functions of such committees are merely to advise the appointing authorities as to the preparation of development plans and generally as to the planning of development in the areas affected. But note the provisions of para. 9, *supra*.

*If it appears to the Minister ; as appear to the Minister to be expedient.*—See note to s. 4, *ante*, on the phrase “ If it appears to the Minister.”

*Consultation.*—See note to s. 10, *ante*, on the phrase “ He shall consult,” and the cases there cited. See also note to s. 100, *ante*, on the word “ Consultation.”

*By order.*—For the general provisions as to orders under the Act, see s. 111, *ante*.

*Local Government Act, 1933.*—26 Halsbury's Statutes 295 *et seq.*

*Appointment of joint committees.*—See the Local Government Act, 1933, s. 91 (26 Halsbury's Statutes 355). This section gives local authorities a general residuary power to concur with any one or more other local authorities in appointing from amongst their respective members a joint committee of those authorities for any purpose in which they are jointly interested, with power to delegate to the committee so appointed. This power still holds, in relation to town planning, by virtue of the provisions of para. 11, *supra*, notwithstanding the special provisions of this Part of the present Schedule for the appointment of joint advisory committees.

*Definitions.*—As to “ local planning authority,” see ss. 4 and 119 (1), *ante* ; as to “ development plan,” see ss. 5 and 119 (1), *ante* ; and as to “ development,” see ss. 12 and 119 (1), *ante*. For definition of “ functions,” see s. 119 (1), *ante*.

## Section 13

## SECOND SCHEDULE

### EXCEPTED ENACTMENTS FOR THE PURPOSES OF SECTION 13

The Public Health (Buildings in Streets) Act, 1888 ;

Sections thirty to thirty-four of the Public Health Act, 1925 ;

Section five of the Roads Improvement Act, 1925 ;

Section one hundred and seven of the Public Health Act, 1936 ;

Any enactment making such provision as might by virtue of any Act of Parliament have been made in relation to the area to which the order applies by means of a bye-law, order or regulation not requiring confirmation by Parliament ;

Any enactment which has been previously excluded or modified by any development order, and any enactment having substantially the same effect as any such enactment. [2728]

*Public Health (Buildings in Streets) Act, 1888.*—13 Halsbury's Statutes 810.

*Public Health Act, 1925, ss. 30-34.*—13 Halsbury's Statutes 1126 *et seq.*

*Roads Improvement Act, 1925, s. 5.*—9 Halsbury's Statutes 223.

*Public Health Act, 1936, s. 107.*—29 Halsbury's Statutes 403.

*Definitions.*—As to “ development order,” see ss. 13 and 119 (1), *ante*. For definition of “ enactment,” see s. 119 (1), *ante*.

### THIRD SCHEDULE

#### EXCEPTED CLASSES OF DEVELOPMENT

##### PART I

##### DEVELOPMENT INCLUDED IN EXISTING USE FOR PURPOSES OTHER THAN COMPENSATION UNDER S. 20

1. The rebuilding, as often as occasion may require, of any building which was in existence on the appointed day and of any building which was in existence before that day but has been destroyed or demolished since the seventh day of January, nineteen hundred and thirty-seven (including the making good of war damage which has been sustained by any such building), so long as the cubic content of the original building is not exceeded in the case of a dwelling-house, by more than one-tenth or seventeen hundred and fifty cubic feet, whichever is the greater, and in any other case by more than one-tenth.

2. The use as two or more separate dwelling-houses of any building which on the appointed day was used as a single dwelling-house. [2729]

##### PART II

##### DEVELOPMENT INCLUDED IN EXISTING USE FOR ALL PURPOSES

3. The enlargement, improvement or other alteration, as often as occasion may require, of any such building as is mentioned in paragraph 1 of this Schedule, or any building substituted therefor by the carrying out of any such operations as are mentioned in that paragraph, so long as the cubic content of the original building is not increased or exceeded, in the case of a dwelling-house, by more than one-tenth or seventeen hundred and fifty cubic feet, whichever is the greater, and in any other case by more than one-tenth.

4. The carrying out, on land which was used for the purposes of agriculture or forestry on the appointed day, or any building or other operations required for the purposes of that use, other than operations for the erection, enlargement, improvement or alteration of dwelling-houses or of buildings used for the purposes of market gardens, nursery grounds or timber yards or for other purposes not connected with general farming operations or with the cultivation or felling of trees.

5. The winning and working, on land held or occupied with land used for the purposes of agriculture, of any minerals reasonably required for the purposes of that use, including the fertilisation of the land so used and the maintenance, improvement or alteration of buildings or works thereon which are occupied or used for the purposes aforesaid.

6. In the case of a building or other land which, on the appointed day, was used for a purpose falling within any general class specified in an order made by the Minister for the purposes of this paragraph, or which, being unoccupied on the appointed day, was last used (otherwise than before the seventh day of January, nineteen hundred and thirty-seven) for any such purpose, the use of that building or land for any other purpose falling within the same general class.

7. In the case of any building or other land which, on the appointed day, was in the occupation of a person by whom it was used as to part only for a particular purpose, the use for that purpose of any additional part of the building or land not exceeding one-tenth of the cubic content of the part of the building used for that purpose on the appointed day or, as the case may be, one-tenth of the area of the land so used on that day.

8. The deposit of waste materials or refuse in connection with the working of minerals, on any land comprised in a site which, on the appointed day, was being used for that purpose, so far as may be reasonably required in connection with the working of those minerals. [2730]

*General note.*—Both Parts of this Schedule may conveniently be considered together. The value of an interest in land which is being acquired for public purposes and which falls to be assessed under Rule (2) of s. 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919 (2 Halsbury's Statutes 1178), is to be ascertained on the assumption that planning permission would be granted under Part III of the Act, *enfe*, for development of any class

specified in this Schedule, but would not be so granted for any other development (s. 51, *ante*).

In order to ascertain the development value of land for the purpose of making a claim for a payment out of the £300,000,000 under Part VI, *ante*, it will be necessary to ascertain two values—the “unrestricted value” and the “restricted value” of the land. The latter is to be calculated on the assumption that planning permission would be granted under Part III of the Act for development of any class specified in this Schedule, but would not be so granted for any other class (s. 61, *ante*).

Except in certain very exceptional circumstances, Part VII, *ante*, which relates to development charges, does not apply to operations of any description specified in this Schedule or to any use of land so specified (s. 69 (2), *ante*).

The provisions of s. 81, which relate to mineral workings, and of any regulations made thereunder do not apply to the winning and working of any such minerals as are mentioned in para. 5 of this Schedule, *ante* (s. 81 (6), *ante*).

Planning permission must be obtained to carry out any development specified in this Schedule, but in the case of development included in Part II, *ante*, if it is refused by the Minister, either on appeal or on the reference of the application to him for determination, or is so granted subject to conditions, then a claim for compensation may be made under s. 20, *ante*. Where permission is refused in respect of development included in Part I, *ante*, the owner's remedy must be sought by way of a purchase notice under s. 19, *ante*.

*Rebuilding*.—See *Re De Teissier's Settled Estates*, *Re De Teissier's Trusts*, *De Teissier v. Teissier*, [1893] 1 Ch. 153; *Re Walker's Settled Estate*, [1894] 1 Ch. 189; *Re Wright's Settled Estates* (1900), 83 L. T. 159; *Re Kensington Settled Estates* (1905), 21 T. L. R. 351; *Re Windham's Settled Estate*, [1912] 2 Ch. 75.

Contrast para. 3 in Part II of the present Schedule (“enlargement, improvement or other alteration”).

*As often as the occasion may require*.—Cases may arise in which these words will prove important.

*Appointed day*.—This means such day as the Minister of Town and Country Planning may by order appoint (see ss. 119 (1) and 120, *ante*). July 1, 1948, has been so appointed (S.I. 1948 No. 213).

*Cubic content*.—This is to be construed by reference to that content as ascertained by external measurement (s. 112 (3), *ante*).

*The use*.—Note the definition of “use” in s. 119 (1), *ante*. Enlargement, improvement or other alteration which may be necessary for the purpose of converting a single dwelling-house into two or more separate dwelling-houses is covered by para. 3, *ante*.

*Separate*.—This word is important.

*Paragraph 3*.—Note that by proviso (a) to sub-s. (2) of s. 12, *ante*, planning permission is not required for the carrying out of works for maintenance, improvement or other alteration being works which affect only the interior of the building or which do not materially affect the external appearance of the building.

In connection with this paragraph, read s. 112 (2) and (3), *ante*.

*The Minister*.—The Minister of Town and Country Planning (s. 1, *ante*).

*Definitions*.—For definitions of “building,” “war damage,” “use,” “land,” “agriculture,” “building operations,” “erection,” “minerals” and “buildings or works,” see s. 119 (1), *ante*.

## Sections 20, 22, 27

## FOURTH SCHEDULE

### PROVISIONS RELATING TO COMPENSATION UNDER PART III

1. For the purpose of assessing any compensation payable under section twenty, section twenty-two or section twenty-seven of this Act, being compensation in respect of the depreciation in value of any interest in land, section two of the Acquisition of Land (Assessment of Compensation) Act, 1919 (which prescribes rules for the assessment of compensation by an official arbitrator), shall, so far as applicable and subject to any necessary modifications, have effect as it has effect for the purpose of assessing compensation for the compulsory acquisition of land.

2. Where any compensation is payable as aforesaid by virtue of any decision or order given or made before the expiration of two years from the end of the war period as defined by section forty of the Requisitioned Land and War Works Act, 1945 (in this paragraph referred to as “the Act of 1945”), Part VIII of that Act (which provides for adjustments of compensation for the purpose of eliminating changes in value due to the exercise of emergency powers) shall apply in relation to any such compensation as aforesaid as it applies in relation to compensation payable on the acquisition of an easement over land by virtue of Part II of the Act of 1945:

Provided that for the purposes of this paragraph subsection (5) of section forty-one of the Act of 1945 shall have effect as if paragraph (a) thereof were omitted.

3. Where any interest in land is subject to a mortgage—

(a) any compensation as aforesaid which is payable in respect of the depreciation in the value of that interest shall be assessed as if the interest were not subject to the mortgage;

- (b) a claim for any such compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the person entitled to the interest ;
- (c) a mortgagee shall not be entitled to claim any such compensation in respect of his interest as such ; and
- (d) the compensation payable in respect of the interest subject to the mortgage shall be paid by the local planning authority to the mortgagee or, where there is more than one mortgagee to the first mortgagee, and shall in either case be applied by him as if it were proceeds of sale.

4. Any compensation payable to any person by virtue of any order made under section twenty-six of this Act shall be reduced by the value to him of any timber, apparatus or other materials removed for the purposes of complying with that order. [2731]

*General note.*—Where compensation is payable under s. 20, *ante*, for the refusal of permission to carry out development in certain cases, the amount of such compensation is to be assessed according to the provisions of the present Schedule, and similar provision is made by s. 22 (7), *ante*, in respect of compensation for depreciation in the value of interests in land under s. 22.

In addition, by s. 27 (1), *ante*, where compensation is payable in respect of the depreciation of interests in land or through disturbance in the enjoyment of land, such compensation is also to be assessed in accordance with the provisions of this Schedule.

*Acquisition of Land (Assessment of Compensation) Act, 1919, s. 2.*—2 Halsbury's Statutes 1178.

*Requisitioned Land and War Works Act, 1945.*—38 Halsbury's Statutes 582. For Part II, Part VIII and ss. 40 and 41 (5) thereof, see 38 Halsbury's Statutes 586, 614, 615.

*As if it were proceeds of sale.*—S. 105 of the Law of Property Act, 1925 (15 Halsbury's Statutes 288), lays down the manner in which the proceeds of sale of mortgaged property are to be applied.

*S. 26 of this Act.*—See *ante*. This section empowers local planning authorities, in the interests of proper planning, to make orders requiring any use of land to be discontinued (or continued only subject to conditions) or any buildings or works to be altered or removed.

*Definitions.*—As to "local planning authority," see ss. 4 and 119 (1), *ante*. For definitions of "land" and "mortgage," see s. 119 (1), *ante*.

## Section 35

## FIFTH SCHEDULE

### SPECIAL PROVISIONS RELATING TO DEVELOPMENT BY STATUTORY UNDERTAKERS

**1. Applications for permission to develop.**—(1) Subject to the provisions of this Schedule, where an application for planning permission to develop operational land, made by the person carrying on a statutory undertaking, is referred to the Minister under Part III of this Act in pursuance of directions given by the Minister, or where an appeal is made to the Minister under that Part from the decision of the local planning authority on such an application, the application or appeal shall be dealt with by the Minister and the appropriate Minister.

(2) Where, upon any such application or appeal, the Minister and the appropriate Minister propose to refuse permission or to grant permission subject to conditions, they shall notify to the person carrying on the undertaking the decision which they propose to give, and if within twenty-eight days from the date on which he receives the notification that person makes application to the appropriate Minister in that behalf, the decision shall be embodied in an order made by the Minister and the appropriate Minister, and any such order shall be subject to special parliamentary procedure.

(3) In respect of any decision given under this paragraph refusing permission to develop operational land, or granting such permission subject to conditions, the person carrying on the statutory undertaking shall be entitled to recover compensation from the local planning authority in accordance with the Fourth Schedule to the Act of 1944 :

Provided that if the Minister and the appropriate Minister are satisfied, in the case of land acquired by the undertakers after the seventh day of January, nineteen hundred and forty-seven, that it is unreasonable, having regard to the nature, situation and existing development of the land and of any neighbouring land, and to any other material considerations, that compensation should be so recovered in respect of the decision, they may include therein a direction that the foregoing provisions of this sub-paragraph shall not apply in relation to that decision.

(4) Notwithstanding anything in Part III of this Act, planning permission to

develop operational land shall not except with the consent of the undertakers be granted subject to conditions requiring that any buildings or works authorised by the permission shall be removed, or that any use of the land so authorised shall be discontinued, at the expiration of a specified period.

(5) The provisions of this Act shall apply to an application which is dealt with under this paragraph by the Minister and the appropriate Minister as if it had been dealt with by the Minister.

(6) For the avoidance of doubt it is hereby declared that for the purposes of the application of the Statutory Orders (Special Procedure) Act, 1945, to any order made by the Minister and the appropriate Minister under this paragraph, the requirements imposed by this Act with respect to the consideration of any such application or appeal as is mentioned in sub-paragraph (1) of this paragraph are to be deemed to be requirements with respect to proceedings preliminary to the making of the order within the meaning of section two of the said Statutory Orders (Special Procedure) Act, 1945.

### **2. Special provisions as to development requiring government authorisation.—**

(1) Where, under the enactments regulating the carrying on of a statutory undertaking, the authorisation of any government department is required in respect of any development of operational land, then—

(a) if that department decides to refuse that authorisation on the ground only that planning permission ought not to be granted for the development under Part III of this Act, or to grant that authorisation and direct that such permission shall be deemed to be granted subject to conditions other than conditions imposed as part of the authorisation, sub-paragraphs (2) and (3) of paragraph 1 of this Schedule shall apply, subject to any necessary modifications, in relation to that decision and to any proposal by the department to give that decision as they apply in relation to a decision, or a proposed decision, of the Minister and the appropriate Minister under that paragraph ;

(b) except where that authorisation has been granted without any direction as to the grant of planning permission, the Minister and the appropriate Minister shall not be required to deal with an application for such permission under sub-paragraph (1) of the said paragraph 1.

(2) Notwithstanding anything in the proviso to sub-paragraph (3) of the said paragraph 1, no direction shall be given thereunder for the exclusion of the payment of compensation in respect of a decision relating to the development of land of any statutory undertakers if the land was acquired by those undertakers for the purposes of that development (whether by agreement or compulsorily) with the consent or authority of a government department.

**3. Revocation and modification of permission.—**(1) The provisions of Part III of this Act with respect to the revocation and modification of permission to develop land shall have effect, in relation to any permission granted, on an application made by the person carrying on a statutory undertaking, for the development of operational land, as if for any reference therein to the Minister there were substituted a reference to the Minister and the appropriate Minister.

(2) Where the Minister and the appropriate Minister propose to confirm or make an order under section twenty-one of this Act as modified by this paragraph, they shall notify to the person carrying on the statutory undertaking the fact that they so propose, and shall afford him an opportunity of objecting to the proposal ; and if any objection is so made by that person and is not withdrawn, the order shall be subject to special parliamentary procedure.

(3) In relation to any order made by the Minister and the appropriate Minister under the said section twenty-one as modified by this paragraph, sub-paragraph (3) of paragraph 1 of this Schedule shall apply as it applies to a decision given under that paragraph refusing permission to develop operational land, or granting such permission subject to conditions, and references in the said sub-paragraph (3) to a decision under that paragraph shall accordingly include references to any such order as aforesaid.

**4. Orders relating to authorised uses.—**(1) The provisions of Part III of this Act with respect to the making of orders requiring the discontinuance of any use of land or imposing conditions on the continuance thereof, or requiring buildings



or works on land to be altered or removed, shall have effect, in relation to operational land of the person carrying on any statutory undertaking, as if for any reference therein to the Minister there were substituted a reference to the Minister and the appropriate Minister.

(2) Where the Minister and the appropriate Minister propose to confirm or make an order under section twenty-six of this Act, as modified by this paragraph, they shall notify to the person carrying on the statutory undertaking the fact that they so propose, and shall afford him an opportunity of objecting to the proposal; and if any objection is so made by that person and is not withdrawn, the order shall be subject to special parliamentary procedure.

(3) Any compensation payable under section twenty-seven of this Act in consequence of an order made under the said section twenty-six as modified by this paragraph shall be assessed in accordance with the provisions of the Fourth Schedule to the Act of 1944. [2732]

*General note.*—This Schedule continues, with additions and modifications, ss. 35 and 36 of the 1944 Act (37 Halsbury's Statutes 463, 464) which, by ss. 113 and 120, *ante*, and the Ninth Schedule, Part II, *post*, are repealed as from July 1, 1948.

By s. 35 (2), *ante*, the provisions of the present Schedule have effect for the purposes of the application of Part III of the Act, *ante*, to land of statutory undertakers being operational land and to the development of such land by such undertakers, but a proviso to the subsection negatives its application to the display of advertisements on operational land.

Compensation to statutory undertakers in respect of operational land is to be assessed in accordance with the provisions of the Fourth Schedule to the 1944 Act, which, as amended by s. 113, *ante*, and the Eighth Schedule, *post*, appears in the Eleventh Schedule, *post*. As to compensation on the acquisition of operational land of statutory undertakers, see s. 84 (4), *ante*.

If permission to develop is refused or revoked, or if statutory undertakers are required to remove buildings or works under s. 26, *ante*, the refusal, revocation or requirement is to be embodied in an order to be made or confirmed jointly by the Minister of Town and Country Planning and the Minister concerned with the undertaking. Special parliamentary procedure may apply.

*Operational land.*—Not all the land of statutory undertakers is operational land, a definition of the term being given in s. 119, *ante*. Broadly, it means land used or held for the purpose of the undertaking, not being land comparable with land in general.

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*). This term should be distinguished from "the appropriate Minister" (see in each case s. 119 (1), *ante*).

*Special parliamentary procedure.*—See note to s. 5, *ante*.

*Fourth Schedule to the Act of 1944.*—The Fourth Schedule to the Town and Country Planning Act, 1944 (37 Halsbury's Statutes 487 *et seq.*). For the Schedule as amended by the present Act, see the Eleventh Schedule, *post*.

*After January 7, 1947.*—*I.e.* after the contents of the Bill which led to the present Act became known.

*Statutory Orders (Special Procedure) Act, 1945.*—38 Halsbury's Statutes 439. For s. 2 thereof, see 38 Halsbury's Statutes 442.

*Definitions.*—As to "planning permission," "develop" and "development," see ss. 12 and 119 (1), *ante*; as to "local planning authority," see ss. 4 and 119 (1), *ante*. For definitions of "operational land," "statutory undertaking," "land," "buildings or works," "use," "enactment" and "government department," see s. 119 (1), *ante*.

## Section 49

## SIXTH SCHEDULE

### PROCEDURE FOR MAKING ORDERS UNDER S. 49

1. Before making an order under section forty-nine of this Act the Minister of Transport shall publish in at least one local newspaper circulating in the area in which any highway to which the order relates is situated and in the London Gazette a notice—

- (a) stating the general effect of the order;
- (b) specifying a place in the said area where a copy of the draft order and of any relevant map or plan may be inspected by any person free of charge at all reasonable hours during a period of three months from the date of the publication of the notice; and
- (c) stating that, within the said period, any person may by notice to that Minister object to the making of the order.

2. Not later than the date on which the said notice is published as aforesaid, the Minister of Transport shall serve a copy thereof (together with a copy of the draft order and of any relevant map or plan)—

- (a) on every local authority in whose area any highway to which the order relates is situated;



- (b) on any water, hydraulic power, gas or electricity undertakers, having any cables, mains, pipes or wires laid along, across, under or over any highway to be stopped up or diverted under the order.

3. Not later than the date on which the said notice is published as aforesaid, the Minister of Transport shall cause a copy thereof to be displayed in a prominent position at the ends of so much of any highway as is proposed to be stopped up or diverted under the order.

4. If before the expiration of the said period of three months an objection is received by the Minister of Transport from any local authority or undertakers on whom a notice is required to be served under this Schedule, or from any other person appearing to him to be affected by the order, and the objection is not withdrawn, the Minister shall cause a local inquiry to be held :

Provided that except where the objection is made by any such authority or undertakers as aforesaid, the Minister may dispense with such an inquiry if he is satisfied that in the special circumstances of the case the holding of such an inquiry is unnecessary.

5. After considering any objections to the order which are not withdrawn, and, where a local inquiry is held, the report of the person who held the inquiry, the Minister may make the order either without modification or subject to such modifications as he thinks fit.

6. Immediately after the order has been made, the Minister of Transport shall publish in the manner prescribed by paragraph 1 of this Schedule a notice stating that the order has been made, and naming a place where a copy of the order may be seen at all reasonable hours, and paragraphs 2 and 3 of this Schedule shall apply to any such notice as they apply to the notice required to be published by the said paragraph 1.

7. Subsections (2) and (3) of section eleven of this Act shall apply to any order under section forty-nine of this Act as they apply to a development plan approved or made under Part II of this Act, and as if for references therein to the notice required by subsection (1) of that section there were substituted references to the notice required by the last foregoing paragraph :

Provided that where any such order is subject to special parliamentary procedure, then—

- (a) if the order is confirmed by Act of Parliament under section six of the Statutory Orders (Special Procedure) Act, 1945, the said subsections (2) and (3) shall not apply ;
- (b) in any other case the said subsections shall have effect as if in subsection (2) for the reference to the date on which the notice required by the last foregoing paragraph is first published there were substituted a reference to the date on which the order becomes operative under the said section six, and as if in subsection (3) the words from “ and shall become operative ” to the end of the subsection were omitted.

8. In this Schedule the expression “ local authority ” means the council of a county, county borough, county district or parish and the parish meeting of a rural parish not having a separate parish council. [2733]

*General note.*—S. 49 (1), *ante*, empowers the Minister of Transport by order to authorise the stopping up or diversion of any highway if satisfied of the necessity for such a course to enable specified development to be carried out, and it is provided that any such order is to be made in accordance with the provisions of this Schedule.

The Minister of Transport is the promoting and confirming authority for the order and the Minister will proceed by publishing in the local Press notice of the order proposed (para. 1, *ante*), and by serving notice of the draft on local authorities and statutory undertakers whose areas or works are affected (para. 2). A copy of the notice is also to be displayed at each end of the part of the highway affected (para. 3).

Three months must be allowed for the lodging of objections by any person affected by the order, and where the objection is made by a local authority or statutory undertakers, an inquiry must be held before the order is confirmed. In the case of other objections the Minister may, but is not bound to, hold an inquiry (para. 4).

Notice that an order has been made must be given in the local Press (para. 6).

See, generally, the notes to s. 49, *ante*.

*Minister of Transport.*—The Minister of Transport was originally appointed under s. 1 of the Ministry of Transport Act, 1919 (3 Halsbury's Statutes 422). During the war a Minister of War Transport was appointed, but by the Ministry of War Transport (Dissolution) Order, 1946 (S. R. & O., 1946, No. 375), made under s. 1 (2) of the Ministers of the Crown (Transfer of Functions) Act, 1946 (39 Halsbury's Statutes 82), that Ministry was dissolved and the functions of the Minister transferred to the Minister of Transport.

*Local authority.*—Note the definition in para. 8, which differs from that in s. 119 (1), *ante*.

*The Minister.*—This term might have been expected to refer to the Minister of Town and Country Planning (ss. 1 and 119 (1), *ante*), but it is clear from the context that the reference is to the Minister of Transport. Previously the draftsman had been careful to refer to "that Minister." Note that in para. 5, *ante*, the only expression used is "the Minister," though para. 6, *ante*, refers again to "the Minister of Transport" in full.

*Local inquiry.*—See s. 104, *ante*, and notes thereto.

*If he is satisfied.*—See note to s. 4, *ante*, on the phrase "If it appears to the Minister."

*Development plan.*—For definition, see ss. 5 and 119 (1), *ante*.

*Special parliamentary procedure.*—See note to s. 5, *ante*.

*Statutory Orders (Special Procedure) Act, 1945, s. 6.*—38 Halsbury's Statutes 444. This section deals with the operation of orders to which that Act applies.

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## Sections 44, 113

## EIGHTH SCHEDULE

## ENACTMENTS AMENDED

*Enactment amended**Amendments*

The Electricity (Supply)  
Act, 1919, 9 & 10  
Geo. 5, c. 100.

In section twenty-one, after the words "local authority", in the second place where those words occur, there shall be inserted the words "and the local planning authority within the meaning of the Town and Country Planning Act, 1947", and after the words "county council", in the second place where those words occur, there shall be inserted the words "not being the local planning authority".

The Roads Improvement  
Act, 1925, 15 & 16  
Geo. 5, c. 68.

In section five, in paragraph (b) of the proviso to subsection (1) for the words from "every authority" to the words "such district" there shall be substituted the words "the local planning authority within the meaning of the Town and Country Planning Act, 1947".

The Betting and Lotteries  
Act, 1934, 24 & 25  
Geo. 5, c. 58.

In section six, in subsection (2) for the words "the responsible authority under any planning scheme in force in an area" there shall be substituted the words "the planning authority for any area"; and in subsection (4) for the words "any responsible authority under a planning scheme in force in an area" there shall be substituted the words "the planning authority for any area".

In section seven, in subsection (1) the words from "where the track, or any part thereof," to the words "no such scheme is in force" shall be omitted; for the words "the planning authority have consented to the establishment or continuance of the track" there shall be substituted the words "any planning permission required under Part III of the Town and Country Planning Act, 1947, for the establishment of the track, or for the continuance of the track during the period for which the licence would be in force, has been granted thereunder or is deemed to be so granted"; and for the words "their consent in writing to the licensing authority" there shall be substituted the words "the licensing authority that any planning permission required as aforesaid has been so granted or is deemed to be so granted".

In section twenty, in subsection (1) for the definition of "planning authority" there shall be substituted the following definition:—

" 'planning authority' means the local planning authority within the meaning of the Town and Country Planning Act, 1947";  
and the definition of "planning scheme" shall be omitted.

<i>Enactment amended</i>	<i>Amendments</i>
The Restriction of Ribbon Development Act, 1935, 25 & 26 Geo. 5, c. 47.	In section four, the words "Where restrictions are in force under the foregoing provisions of this Act" and the words "except at such places as may be permitted by them" shall be omitted, and in the proviso to that subsection for the words from "any means of access" to the end of the subsection there shall be substituted the words "any means of access for the construction, formation or laying out of which planning permission has been granted under Part III of the Town and Country Planning Act, 1947, or which was constructed, formed or laid out before the appointed day within the meaning of the said Act, unless it was constructed, formed or laid out in contravention of restrictions in force under the foregoing provisions of this Act."
The Trunk Roads Act, 1936, 1 Edw. 8 & 1 Geo. 6, c. 5.	<p>In section four, for subsection (1) there shall be substituted the following subsection :—</p> <p>"(1) In this section, and in the Fourth Schedule to this Act, the expression 'the authority' means, in relation to a trunk road, the council of the county or county borough in which the road is situated :</p> <p>Provided that where the road is situated within a non-county borough or an urban district and, immediately before the road became a trunk road either—</p> <p>(a) the road was an unclassified road ; or</p> <p>(b) functions of maintenance were exercisable in relation to the road, under section thirty-two of the Local Government Act, 1929, by the council of the borough or district,</p> <p>the said expression means that council."</p> <p>In the Second Schedule, in the proviso substituted for the proviso to subsection (1) of section five of the Roads Improvement Act, 1925, from the words "local authority for every district" to the words "interim development of that land" there shall be substituted the words "local planning authority within the meaning of the Town and Country Planning Act, 1947".</p> <p>In the Fourth Schedule, in paragraphs 6 and 7, for the words "sections thirteen to fifteen" there shall be substituted the words "sections thirteen and fourteen".</p>
The Public Health Act, 1936, 26 Geo. 5 & 1 Edw. 8, c. 49.	In section fifty-three, in paragraph (ii) of subsection (1) for the words "any provision applicable to the building under a planning scheme" there shall be substituted the words "any condition imposed on the grant of planning permission for that building under Part III of the Town and Country Planning Act, 1947."
The Housing Act, 1936, 26 Geo. 5 & 1 Edw. 8, c. 51.	In section thirty-five, in subsection (2) for the words "any planning scheme or proposed planning scheme" there shall be substituted the words "any development plan within the meaning of the Town and Country Planning Act, 1947."

*Enactment amended*

The Town and Country  
Planning Act, 1944,  
7 & 8 Geo. 6, c. 47.

*Amendments*

In section fifteen, for the words "this Part of this Act" there shall be substituted the words "Part IV of the Town and Country Planning Act, 1947, not being land comprised in a licensing planning area within the meaning of the Licensing Planning (Temporary Provisions) Acts, 1945 and 1946."

In section nineteen, for the words "local planning authority" wherever those words occur there shall be substituted the words "local authority"; in subsection (1) for the words from "or appropriated" to the end of the subsection there shall be substituted the words "under section thirty-eight or section forty of the Town and Country Planning Act, 1947, or appropriated for purposes for which land can be acquired under those sections and is for the time being held by the authority for the purposes for which it was acquired or appropriated"; in subsection (3) for the words "this Part of this Act" there shall be substituted the words "Part IV of the Town and Country Planning Act, 1947"; in subsection (6) after the word "shall" there shall be inserted the words "in the case of land comprised in an area defined by a development plan as an area of comprehensive development or of land contiguous or adjacent to any such area which is designated by the development plan as subject to compulsory acquisition by the appropriate local authority", for the words "land which the authority have acquired for the purposes of this Part of this Act" there shall be substituted the words "any such land which the authority have acquired as mentioned in subsection (1) of this section", and for the words "accommodation thereon" there shall be substituted the words "thereon accommodation suitable to their reasonable requirements"; in subsection (8) for the words "section forty-two of this Act" there shall be substituted the words "section thirty of the Town and Country Planning Act, 1947"; and in subsection (10) for the words from "land which" to "this Part of this Act" there shall be substituted the words "any such land as is mentioned in subsection (1) of this section".

In section twenty, for the words "local planning authority" wherever those words occur, there shall be substituted the words "local authority"; in subsection (1) for the words from "land which" to "purposes of this Part of this Act" there shall be substituted the words "any such land as is mentioned in subsection (1) of section nineteen of this Act", and for the words "this Part of this Act" in the second and third places where those words occur there shall be substituted the words "Part IV of the Town and Country Planning Act, 1947"; and in subsection (4) for the words "the two last preceding subsections" there shall be substituted the words "subsection (2) of this section".

In section twenty-two, in subsection (1) for the words from "local planning" to "authorised by this Part of this Act" there shall be substituted the words "local authority as mentioned in subsection (1) of

*Enactment amended*

The Town and Country  
Planning Act, 1944,  
7 & 8 Geo. 6, c. 47.—  
*cont.*

*Amendments*

acquired by the Central Land Board under section forty-three of the Town and Country Planning Act, 1947, whether done by the local authority or by any person deriving title under the local authority or under the Board, as the case may be, shall be deemed to be authorised by this section", and for the words "by such an authority" in both places where those words occur there shall be substituted the words "under that Act"; in subsection (2) for the words "other than the local planning or highway authority" there shall be substituted the words "deriving title under the local authority" after the word "appropriated" there shall be inserted the words "or under the Central Land Board", after the word "authority", in the second place where that word occurs there shall be inserted the words "or against the Board, as the case may be", and after the word "authority" in the third and fourth places where that word occurs there shall be inserted the words "or Board"; in subsection (3) for the words from "the terms of an interim development order" to the end of the subsection there shall be substituted the words "permission granted under Part III of the Town and Country Planning Act, 1947, and not otherwise"; and in subsection (4) for the words "local planning or highway authority" there shall be substituted the words "local authority".

In section twenty-three, in subsection (1) for the words from "land which has" to the end of the subsection there shall be substituted the words "any such land as is mentioned in subsection (1) of section nineteen of this Act if he is satisfied that a suitable alternative right of way has been or will be provided, or that the provision thereof is not required"; for subsections (2) and (3) there shall be substituted the following subsections:—

"(2) The Sixth Schedule to the Town and Country Planning Act, 1947, shall apply to an order under this section as it applies to an order under section forty-nine of that Act, and the said Schedule shall, in its application to an order under this section, have effect as if for any reference therein to the Minister of Transport there were substituted a reference to the Minister.

(3) The Minister of Transport or a local highway authority may be authorised to purchase land compulsorily for the purpose of providing any public right of way which is to be provided as an alternative to a right of way extinguished under this section; and the Acquisition of Land (Authorisation Procedure) Act, 1946, shall apply to the compulsory acquisition of land under this subsection, and accordingly shall have effect—

(a) as if this subsection had been in force immediately before the commencement of that Act;

(b) as if this subsection were included among the enactments specified in paragraph (b) of subsection (1) of section one of that Act;

Provided that section two of the said Act shall not apply to the compulsory acquisition of land under this subsection."

*Enactment amended*

The Town and Country  
Planning Act, 1944,  
7 & 8 Geo. 6, c. 47.—  
*cont.*

*Amendments*

In subsection (4) for the words "local planning or highway authority" wherever those words occur there shall be substituted the words "local authority", and for the words "subsection (2) of this section" there shall be substituted the words "paragraph 1 of the Sixth Schedule to the Town and Country Planning Act, 1947"; and at the end of the section there shall be added the following subsection:—

"(5) Regulations made under the Town and Country Planning Act, 1947, may provide for securing that any proceedings required to be taken for the purposes of an order under this section may be taken concurrently with any proceedings required to be taken for the purposes of the acquisition of the land over which the right of way is to be extinguished, or for securing that any proceedings required to be taken for the purposes of the acquisition of any other land under subsection (3) of this section may be taken concurrently with either or both of the said proceedings."

In section twenty-four, in subsection (1) for the words "This Part of this Act" there shall be substituted the words "Part IV of the Town and Country Planning Act, 1947"; and in subsection (3) after the word "Minister" there shall be inserted the words "or the Central Land Board".

In section twenty-five, in subsection (1) for the words from "or appropriated" to "acquired the land" there shall be substituted the words "by a purchasing authority under Part IV of the Town and Country Planning Act, 1947, or which has been appropriated by a local authority as mentioned in subsection (1) of section nineteen of this Act", and for the words "authority or that Minister" there shall be substituted the words "purchasing or appropriating authority"; in subsection (2) for the words "authority or Minister" there shall be substituted the words "purchasing or appropriating authority"; in subsection (3) for the words "authority or the said Minister" there shall be substituted the words "purchasing or appropriating authority"; in subsection (4) for the words "local planning or highway authority, the authority" there shall be substituted the words "local authority or on statutory undertakers, the authority or undertakers", after "undertaking" there shall be inserted the words "on whom the notice was served under subsection (1) of this section", and for the words "local planning or highway authority" in the second place where those words occur there shall be substituted the words "authority or undertakers on whom the counter-notice was served"; in subsection (5) after the words "a Minister" in the first place where those words occur there shall be inserted the words "or the Central Land Board", and after the word "he" in both places where it occurs there shall be inserted the words "or they", and after the words "a Minister and the appropriate Minister" there shall be inserted the words "or the Central Land Board and the appropriate Minister"; in subsection (8) for the

*Enactment amended*

The Town and Country Planning Act, 1944,  
7 & 8 Geo. 6, c. 47.—  
*cont.*

*Amendments*

words "authority or Minister" there shall be substituted the words "purchasing or appropriating authority"; and in subsection (9) after the word "Minister" there shall be inserted the words "or the Central Land Board".

In section twenty-six, for the words "this Part of this Act" wherever those words occur there shall be substituted the words "Part IV of the Town and Country Planning Act, 1947"; in subsection (1) for the words "local planning authority" there shall be substituted the words "local authority or Minister", and for the words from "an interim development application" to the end of paragraph (b) there shall be substituted the words "an application made under Part III of the Town and Country Planning Act, 1947, by a person carrying on the undertaking for permission to develop any such land or by the revocation or modification of permission granted on such an application or by the making of an order under section twenty-six of that Act in relation to any such land"; in subsection (2) for the words "local planning authority" in paragraph (c) there shall be substituted the words "local authority or Minister"; and in subsection (5) for the words "local planning authority" in both places where those words occur and for the word "authority" there shall be substituted the words "local authority or Minister".

In section twenty-seven, in subsection (1) for the words "the compulsory purchase under this Part of this Act" there shall be substituted the words "(a) the compulsory purchase under Part IV of the Town and Country Planning Act, 1947", and for the words "or the extinguishment thereunder" there shall be substituted the words:—

"(b) a decision on an application under Part III of the said Act by a person carrying on the undertaking for permission to develop any such land or the revocation or modification of permission granted on such an application or the making of an order under section twenty-six of that Act in relation to any such land; or

(c) the extinguishment under Part IV of that Act" and for subsection (5) there shall be substituted the following subsection:—

"(5) In relation to an order made under this section, subsections (1) to (3) of section eleven of the Town and Country Planning Act, 1947, shall apply, subject to any necessary modifications, as they apply in relation to a development plan approved by the Minister under that Act, and accordingly the said subsection (1) shall have effect as if for the reference therein to the local planning authority there were substituted a reference to the appropriate Minister:

Provided that where any such order is subject to special parliamentary procedure, then—

(a) if the order is confirmed by Act of Parliament under section six of the Statutory



*Enactment amended*

The Town and Country  
Planning Act, 1944,  
7 & 8 Geo. 6, c. 47.—  
*cont.*

*Amendments*

Orders (Special Procedure) Act, 1945, sub-  
sections (2) and (3) of the said section  
eleven shall not apply ;

- (b) in any other case those subsections shall have effect in relation to the order as if in subsection (2) for the reference to the date on which the notice required by subsection (1) of the said section eleven is first published there were substituted a reference to the date on which the order becomes operative under section six of the Statutory Orders (Special Procedure) Act, 1945, and as if in subsection (3) the words from 'and shall become operative' to the end of the subsection were omitted."

In section twenty-eight, in subsections (1) and (4) for the words from "or appropriated" to "Minister thereunder" in both places where those words occur there shall be substituted the words "by a purchasing authority under Part IV of the Town and Country Planning Act, 1947, or which has been appropriated by a local authority as mentioned in subsection (1) of section nineteen of this Act", and for paragraph (a) of those subsections respectively there shall be substituted the following paragraph :—

"(a) in the case of land acquired by a purchasing authority other than a Minister, or of land appropriated by a local authority as aforesaid, by that authority or by any other person, if that use conforms with planning control ;";

in subsection (5) after the words "government department" there shall be inserted the words "or the Central Land Board"; and in subsection (8) for the words "local planning or highway authority" there shall be substituted the words "local authority".

In section twenty-nine, in subsection (1) for the words from "or appropriated" to the words "Minister thereunder" there shall be substituted the words "by a purchasing authority under Part IV of the Town and Country Planning Act, 1947, or which has been appropriated by a local authority as mentioned in subsection (1) of section nineteen of this Act", and for paragraph (a) there shall be substituted the following paragraph :—

"(a) in the case of land acquired by a purchasing authority other than a Minister or of land appropriated by a local authority as aforesaid, by that authority or by any other person, if that use conforms with planning control ;";

in subsection (2) for the words "meanings assigned to them respectively by section fourteen of this Act" there shall be substituted the words "same meanings as in the Acquisition of Land (Authorisation Procedure) Act, 1946"; and in subsection (3) for the words "local planning or highway authority" there shall be substituted the words "local authority".

*Enactment amended*

The Town and Country Planning Act, 1944, 7 & 8 Geo. 6, c. 47.—  
*cont.*

*Amendments*

In section thirty, in subsection (1) for the words from "land acquired" to "this Part of this Act" there shall be substituted the words "any such land as is mentioned in subsection (1) of section nineteen of this Act", and after the word "accommodation" in the first place where that word occurs there shall be inserted the words "suitable to the reasonable requirements of those persons"; in subsection (2) for the words "under this Part of this Act" there shall be substituted the words "by a local authority under section thirty-eight of the Town and Country Planning Act, 1947"; in subsection (3) for the words from "local planning" to "this Part of this Act" there shall be substituted the words "local authority as is mentioned in subsection (1) of section nineteen of this Act"; in subsection (4) for the words from "which has been acquired or" to "Minister thereunder" there shall be substituted the words "on land which has been acquired or appropriated by a local authority as mentioned in subsection (1) of section nineteen of this Act or which has been acquired by the Central Land Board or a Minister under Part IV of the Town and Country Planning Act, 1947"; in subsection (5) for the words "local planning or highway authority" there shall be substituted the words "local authority, the Central Land Board", and for the words from "or appropriated" to "this Part of this Act" there shall be substituted the words "by the local authority, Board or Minister under Part IV of the Town and Country Planning Act, 1947, or which has been appropriated by the local authority as mentioned in subsection (1) of section nineteen of this Act".

In section forty-seven, in subsection (1) for the words "local planning or highway authority or a county council" there shall be substituted the words "local authority", and for the words "this Part of this Act" there shall be substituted the words "Part IV of the Town and Country Planning Act, 1947".

In section forty-nine, for the words "this Act" in both places where those words occur there shall be substituted the words "the Town and Country Planning Act, 1947".

In section sixty-five, in subsection (1) in the definitions of "appropriate Minister" and "statutory undertaking" for the words "meaning assigned to it by section thirteen of this Act" there shall be substituted the words "same meaning as in the Town and Country Planning Act, 1947", and for the definition of "purchasing authority" there shall be substituted the following definition:—

"'purchasing authority' means a Minister, the Central Land Board, a local authority or any statutory undertakers purchasing under Part IV of the Town and Country Planning Act, 1947;"

and at the end of that section there shall be added the following subsection:—

"(4) Any reference in this Act to the Town and Country Planning Act, 1947, or to Part IV of that Act shall be construed as including a reference to any provisions of this Act incorporated with the said Part IV."

*Enactment amended*

The Town and Country Planning Act, 1944, 7 & 8 Geo. 6, c. 47.—  
*cont.*

*Amendments*

In the First Schedule, in sub-paragraph (c) of paragraph 1 for the word "thereof" there shall be substituted the words "of this Act".

In the Fourth Schedule, for sub-paragraphs (a) (b) and (c) of paragraph 1 there shall be substituted the following paragraphs :—

- " (a) in respect of any decision given under paragraph 1 of the Fifth Schedule to the Town and Country Planning Act, 1947, refusing permission to develop operational land or granting such permission subject to conditions ;
- (b) in respect of any decision given by a government department under paragraph 2 of that Schedule refusing the authorisation of that department in respect of any development of such land, or directing that permission to develop such land shall be deemed to be granted subject to conditions ;
- (c) in respect of any order made under paragraph 3 of that Schedule revoking or modifying permission to develop such land ;
- (d) in respect of any order made under paragraph 4 of that Schedule in relation to such land ;
- (e) in respect of the extinguishment of any right, or the imposition of any requirement, under section twenty-five of this Act as applied for the purposes of Part IV of the said Act ;
- (f) in respect of any such compulsory purchase as is mentioned in subsection (5) of section forty-five of the said Act ; "

and in sub-paragraph (4) of paragraph 2 after the words " modification of permission " there shall be inserted the words " or order under paragraph 4 of the Fifth Schedule to the Town and Country Planning Act, 1947 ", and in sub-paragraph (3) of paragraph 3 for the words " authority or Minister " there shall be substituted the word " person ".

In paragraph 9 of the Fifth Schedule, in sub-paragraph (1) for the words " by an order made " to " four or nine thereof " there shall be substituted the words—

" by a development plan under the Town and Country Planning Act, 1947, as subject to compulsory acquisition ; or

- (b) in land which is proposed to be acquired compulsorily under subsection (2) of section thirty-seven or subsection (2) of section thirty-eight of that Act ; "

for the words " by an order under any enactment in Part I of this Act confirmed or made " there shall be substituted the words " under Part IV of the Town and Country Planning Act, 1947 " ; after the words " the said Part III " in the second place where those words occur there shall be inserted the words " of the Housing Act, 1936 " ; and for the words " Part I of this Act " in the third place where those words occur there shall be substituted the words " Part IV

*Enactment amended*

The Town and Country Planning Act, 1944, 7 & 8 Geo. 6, c. 47.—  
*cont.*

The Licensing Planning (Temporary Provisions) Act, 1945, 8 & 9 Geo. 6, c. 15.

The Distribution of Industry Act, 1945, 8 & 9 Geo. 6, c. 36.

The Requisitioned Land and War Works Act, 1945, 8 & 9 Geo. 6, c. 43.

The Trunk Roads Act, 1946, 9 & 10 Geo. 6, c. 30.

*Amendments*

of the Town and Country Planning Act, 1947"; and in sub-paragraph (4) for the words "any enactment in Part I of this Act" there shall be substituted the words "Part IV of the Town and Country Planning Act, 1947"; and after the words "the said Part III" there shall be inserted the words "of the Housing Act, 1936."

In the Sixth Schedule, in sub-paragraph (2) of paragraph 1 for the words "section seventeen of this Act" there shall be substituted the words "subsection (2) of section thirty-nine of the Town and Country Planning Act, 1947," and in sub-paragraph (4) of that paragraph after the word "modified" there shall be inserted the words "by the Second Schedule to the Acquisition of Land (Authorisation Procedure) Act, 1946"; in paragraph 2 and in sub-paragraphs (2) and (6) of paragraph 3 for the words "this Act" there shall be substituted the words "the Acquisition of Land (Authorisation Procedure) Act, 1946", and in the said sub-paragraph (2) of paragraph 3 the words "or the draft of the order or the application therefor as the case may be" shall be omitted; in paragraph 8 for the words "Part I of this Act" there shall be substituted the words "the Acquisition of Land (Authorisation Procedure) Act, 1946"; and paragraph 12 shall be omitted.

In section ten, the words "except the City of London" wherever those words occur shall be omitted, and at the end of paragraph (a) of subsection (2) there shall be inserted the following sub-paragraph:—

"(iv) such number of members as may be prescribed by order of the Secretary of State, appointed from amongst their number by the Licensing Justices for the City of London, and an equal number of members appointed, after consultation with the Common Council of the City of London, by the London County Council; and"

and for subsection (1) of section thirteen there shall be substituted the following subsection:—

"(1) In this Act the expression 'local planning authority' means the local planning authority within the meaning of the Town and Country Planning Act, 1947."

In the Second Schedule, in paragraph 8 of Part III, for the words "section forty-two of the Town and Country Planning Act, 1944" there shall be substituted the words "section thirty of the Town and Country Planning Act, 1947".

In subsection (1) of section fifty-nine, for the definition of "local planning authority" there shall be substituted the following definition:—

"'local planning authority' means the local planning authority within the meaning of the Town and Country Planning Act, 1947".

In section five, in subsection (1) for the words "by whom functions are exercisable under section one and section two of the said Act" there shall be substituted the words "within the meaning of section four of the principal Act".

*Enactment amended**Amendments*

The Trunk Roads Act,  
1946, 1 Edw. 9 & 10  
Geo. 6, c. 30.—*cont.*

In the Fourth Schedule, in the subsection substituted in relation to London for subsection (1) of section four of the Trunk Roads Act, 1936, for the words from "and the functions" to the end of the subsection there shall be substituted the words "and for the purposes of this section and of the Fourth Schedule to this Act, the expression 'the authority' means, in relation to any such road, the London County Council".

The Building Restrictions  
(War-Time Contraven-  
tions) Act, 1946, 9 & 10  
Geo. 6, c. 35.

In section seven, in subsection (1) for the definition of "authority responsible for enforcing planning control" there shall be substituted the following definition:—

" 'authority responsible for enforcing planning control' means, in relation to any works on land or use of land, the authority empowered by virtue of section seventy-five of the Town and Country Planning Act, 1947, to serve an enforcement notice in respect thereof under Part III of that Act or the authority who would be so empowered if the works had been carried out, or the use begun, otherwise than in compliance with planning control."

In subsection (5) of the said section seven, for the words from "section thirteen" to the end of the subsection there shall be substituted the words "section seventy-five of the Town and Country Planning Act, 1947".

The Acquisition of Land  
(Authorisation Proce-  
dure) Act, 1946, 9 & 10  
Geo. 6, c. 49.

In section two, in subsection (6) for the words "that Act" there shall be substituted the words "Part IV of the Town and Country Planning Act, 1947".

In section three, in subsection (2) for the words "that is to say, the council specified in subsection (1) of section two of the Town and Country Planning Act, 1932" there shall be substituted the words "within the meaning of section four of the Town and Country Planning Act, 1947"; in the First Schedule, in paragraph 15, sub-paragraph (2) shall be omitted.

The Licensing Planning  
(Temporary Provisions)  
Act, 1946, 9 & 10  
Geo. 6, c. 53.

In subsection (4) of section three, the words "except City of London" shall be omitted.

The New Towns Act,  
1946, 9 & 10 Geo. 6,  
c. 68.

In section three, in subsection (2) for the words "section ten of the Town and Country Planning Act, 1932, a special interim development order" there shall be substituted the words "section thirteen of the Town and Country Planning Act, 1947, a special development order", and for the words "interim development authority" there shall be substituted the words "local planning authority".

In section six, in subsection (3) for the words "section forty-two of the Town and Country Planning Act, 1944" there shall be substituted the words "section thirty of the Town and Country Planning Act, 1947".

In the Fourth Schedule, after the modification of subsection (1) of section sixteen of the Act of 1944 there shall be inserted the words "subsection (3) shall be omitted"; at the end of the modification of section

*Enactment amended*

The New Towns Act,  
1946, 9 & 10 Geo. 6,  
c. 68.—*cont.*

*Amendments*

twenty-two of the said Act there shall be added the words "and in subsection (3) for the words from 'the terms of an interim development order' to the end of the subsection there shall be substituted the words 'permission granted under Part III of the Town and Country Planning Act, 1947'"; and in the modification of section sixty-five of the said Act for the words "and 'loan charges' shall not apply" there shall be substituted the words "'interim development application', 'interim development authority', 'loan charges' and 'planning scheme' shall not apply, in the definition of 'local planning authority' for the words 'has the meaning assigned to it by section fifty-five of this Act' there shall be substituted the words 'means the local planning authority within the meaning of the Town and Country Planning Act, 1947'."

The Civil Aviation Act,  
1946, 9 & 10 Geo. 6,  
c. 70.

In section thirty, in subsection (1) after the word "shall" in the first place where that word occurs there shall be inserted the words "as amended by the Town and Country Planning Act, 1947", and for the words "Part I of that Act" there shall be substituted the words "Part IV of the last mentioned Act". [2734]

*Electricity (Supply) Act*, 1919, s. 21.—7 Halsbury's Statutes 768.

*Local planning authority*.—For definition of this term, see ss. 4 and 119 (1), *ante*.

*Roads Improvement Act*, 1925, s. 5 (1).—9 Halsbury's Statutes 223.

*Betting and Lotteries Act*, 1934, ss. 6 (2), (4), 7 (1) and 20 (1).—27 Halsbury's Statutes 276, 277, 278 and 287.

*Planning permission*.—See ss. 12 and 119 (1), *ante*.

*Restriction of Ribbon Development Act*, 1935, s. 4.—28 Halsbury's Statutes 84.

*Appointed day*.—This means such day as the Minister of Town and Country Planning may by order appoint (s. 119 (1), *ante*). July 1, 1948, has been so appointed (S.I. 1948 No. 213).

*Trunk Roads Act*, 1936.—For s. 4 (1), Sched. II and paras. 6 and 7 of Sched. IV, see 29 Halsbury's Statutes 189, 208, 215 and 216.

*Local Government Act*, 1929, s. 32.—10 Halsbury's Statutes 906.

*Public Health Act*, 1936, s. 53 (1) (ii).—29 Halsbury's Statutes 364.

*Housing Act*, 1936, s. 35 (2).—29 Halsbury's Statutes 592.

*Development plan*.—See ss. 5 and 119 (1), *ante*.

*Town and Country Planning Act*, 1944.—For ss. 15, 16 (1), 19, 20, 22 (1), (2), (3), (4), 23 (1), (2), (3), (4), 24 (1), (3), 25 (1), (2), (3), (4), (5), (8), (9), 26, 27 (1), (5), 28 (1), (4), (5), (8), 29 (1), (2), (3), 30 (1), (2), (3), (4), (5), 42, 47 (1), 49 and 65 thereof, and Sched. I, para. 1 (c), Sched. IV, paras. 1 (a), (b), (c), 2 (4), 3 (3), Sched. V, para. 9 (1), (4), and Sched. VI, paras. 1 (2), (4), 2, 3 (2), (6), 8 and 12 thereto, see 37 Halsbury's Statutes 445, 447, 449, 451, 452, 453, 454, 455, 456, 458, 459, 460, 467, 471, 472, 482, 483, 487, 488, 489, 490, 491, 492, 493.

*Licensing Planning (Temporary Provisions) Acts*, 1945 and 1946.—38 Halsbury's Statutes 279; 39 Halsbury's Statutes 223. As to "licensing planning area," see s. 1 of the 1945 Act, and ss. 1 and 2 of the 1946 Act (38 Halsbury's Statutes 280; 39 Halsbury's Statutes 224, 225).

For ss. 10 and 13 (1) of the 1945 Act, see 38 Halsbury's Statutes 286, and for s. 3 (4) of the 1946 Act, see 39 Halsbury's Statutes 225.

*Central Land Board*.—For the constitution and functions of the Board, see ss. 2 and 3, *ante*.

*Acquisition of Land (Authorisation Procedure) Act*, 1946.—39 Halsbury's Statutes 52. For ss. 1 (1) (b), 2, 3 (2) thereof, and Sched. I, para. 15 (2) and Sched. II thereto, see 39 Halsbury's Statutes 55, 56, 58, 66.

*Statutory Orders (Special Procedure) Act*, 1945, s. 6.—38 Halsbury's Statutes 444.

*Appropriate Minister; statutory undertaking*.—For definitions of these terms, see s. 119 (1), *ante*.

*Distribution of Industry Act*, 1945, Sched. II, Part III, para. 8.—38 Halsbury's Statutes 489.

*Requisitioned Land and War Works Act*, 1945, s. 59 (1).—38 Halsbury's Statutes 623.

*Trunk Roads Act*, 1946, s. 5 (1) and Sched. IV.—39 Halsbury's Statutes 156, 179.

*Building Restrictions (War-Time Contraventions) Act*, 1946, s. 7 (1) and (5).—39 Halsbury's Statutes 907, 908.

*Town and Country Planning Act*, 1932, s. 2 (1).—25 Halsbury's Statutes 472.

*New Towns Act*, 1946, ss. 3 (2), 6 (3) and Sched. IV.—39 Halsbury's Statutes 666, 670, 684.

*Civil Aviation Act*, 1946, s. 30 (1).—39 Halsbury's Statutes 816.

Sections 113, 120

# NINTH SCHEDULE

## ENACTMENTS REPEALED

### PART I

#### ENACTMENTS REPEALED AS FROM PASSING OF THIS ACT

Session and Chapter	Enactment repealed	Extent of repeal
7 & 8 Geo. 6, c. 47.	The Town and Country Planning Act, 1944.	In section twenty-four, in subsection (2) the words from "and section fifty-seven" to the end of the subsection; in section twenty-six, in paragraph (b) of subsection (2) the words from "including" to the end of the paragraph; sections fifty-seven to sixty-two; in section sixty-four, the words "except in so far as is otherwise provided by this Act"; in the Sixth Schedule, in sub-paragraph (4) of paragraph 1 the words "and as amended by Part II of this Act", and in sub-paragraph (1) of paragraph 5 the words "or the amount of any sum payable as a supplement thereto" and the words "together, if any sum is payable as a supplement thereto, with the amount of that sum"; and the Seventh and Eighth Schedules.
8 & 9 Geo. 6, c. 43.	The Requisitioned Land and War Works Act, 1945.	In section forty-one, subsection (7) and paragraph (c) of subsection (8).
9 & 10 Geo. 6, c. 68.	The New Towns Act, 1946.	In section four, in subsection (7) the words from "and that Part II" to the end of the subsection.
9 & 10 Geo. 6, c. 70.	The Civil Aviation Act, 1946.	In the Third Schedule, paragraph 10; in the Fourth Schedule, paragraphs 4 and 5 and paragraph (b) of the proviso to paragraph 6; and in the Sixth Schedule, paragraphs 2 and 3 and paragraph (b) of the proviso to paragraph 4. [2735]

*Passing of this Act.*—August 6, 1947.

*Town and Country Planning Act, 1944.*—For ss. 24 (2), 26 (2) (b), 57-62 and 64 thereof, and Sched. VI, paras. 1 (4), 5 (1), Sched. VII and Sched. VIII thereto, see 37 Halsbury's Statutes 453, 455, 476-481, 482, 491, 492, 493, 494.

*Requisitioned Land and War Works Act, 1945, s. 41 (7), (8) (c).*—38 Halsbury's Statutes 615.

*Civil Aviation Act, 1946.*—For Sched. III, para. 10, Sched. IV, paras. 4, 5, 6, and Sched. VI, paras. 2, 3 and 4 thereto, see 39 Halsbury's Statutes 832, 833, 834, 836.

*New Towns Act, 1946, s. 4 (7).*—39 Halsbury's Statutes 668.



## PART II

## ENACTMENTS REPEALED AS FROM APPOINTED DAY

Session and Chapter	Enactment repealed	Extent of repeal
52 & 53 Vict. c. 27.	The Advertising Stations (Rating) Act, 1889.	Section five.
7 Edw. 7, c. 27.	The Advertisements Regulation Act, 1907.	The whole Act.
7 Edw. 7, c. 53.	The Public Health Acts Amendment Act, 1907.	Section ninety-one.
15 & 16 Geo. 5, c. 52.	The Advertisements Regulation Act, 1925.	The whole Act.
15 & 16 Geo. 5, c. 68.	The Roads Improvement Act, 1925.	In section five, the proviso to subsection (7).
16 & 17 Geo. 5, c. 11.	The Law of Property (Amendment) Act, 1926.	In the Schedule, in the subsection substituted for subsection (7) of section fifteen of the Land Charges Act, 1925, paragraph (a), sub-paragraph (ii) of paragraph (b) and the word "scheme" where that word last occurs.
18 & 19 Geo. 5, c. 32.	The Petroleum (Consolidation) Act, 1928.	Section eleven.
21 & 22 Geo. 5, c. 16.	The Ancient Monuments Act, 1931.	Section two.
22 & 23 Geo. 5, c. 48.	The Town and Country Planning Act, 1932.	The whole Act.
23 & 24 Geo. 5, c. 51.	The Local Government Act, 1933.	In the Seventh Schedule, the words "The Town and Country Planning Act, 1932."
25 & 26 Geo. 5, c. 47.	The Restriction of Ribbon Development Act, 1935.	Sections one to three; sections five to twelve; in paragraph (a) of subsection (3) of section thirteen the words from "or which is for the time being" to the end of that paragraph; section fifteen; the proviso to subsection (1) and subsection (2) of section eighteen; subsections (2), (3) and (4) of section nineteen; subsection (1) of section twenty-three; subsection (1) of section twenty-four except the definitions of "building", "chief officer of police", "land", "middle of the road", "Minister", "owner",

Session and Chapter	Enactment repealed	Extent of repeal
25 & 26 Geo. 5, c. 47.— <i>cont.</i>	The Restriction of Ribbon Development Act, 1935. <i>cont.</i>	“place of public resort”, “proposed road”, “road” and “statutory undertakers”, and subsection (2) of that section; and the First, Second and Third Schedules.
26 Geo. 5 & 1 Edw. 8, c. 49.	The Public Health Act, 1936.	In section one hundred and seven, in subsection (1) the words “but not for the purposes of any planning scheme in operation on the said date”; and in section three hundred and forty-three, in subsection (1) the definition of “planning scheme”.
26 Geo. 5 & 1 Edw. 8, c. 51.	The Housing Act, 1936.	In section sixteen, in subsection (4) the words “and of any planning scheme in operation in the area.” In section one hundred and eighty-eight, in subsection (1) the definition of “planning scheme.”
1 Edw. 8 & 1 Geo. 6, c. 5.	The Trunk Roads Act, 1936.	Subsections (2) to (5) of section four, and in the Fourth Schedule, paragraphs 1 to 4 and in paragraph 5 the words from “subject to restrictions in force” to the words “expenses incurred in so doing” and the proviso to that paragraph.
2 & 3 Geo. 6, c. 22.	The Camps Act, 1939.	Subsection (2) of section three.
2 & 3 Geo. 6, c. 31.	The Civil Defence Act, 1939.	Section seventy.
2 & 3 Geo. 6, c. 40.	The London Government Act, 1939.	In the Fifth Schedule, the words “The Town and Country Planning Act, 1932.”
6 & 7 Geo. 6, c. 5.	The Minister of Town and Country Planning Act, 1943.	Subsection (1) of section six and the First Schedule.
6 & 7 Geo. 6, c. 29.	The Town and Country Planning (Interim Development) Act, 1943.	The whole Act.
6 & 7 Geo. 6, c. 34.	The Restriction of Ribbon Development (Temporary Development) Act, 1943.	The whole Act.

Session and Chapter	Enactment repealed	Extent of repeal
7 & 8 Geo. 6, c. 47.	The Town and Country Planning Act, 1944.	Sections one to fourteen, sections sixteen to eighteen, subsection (3) of section twenty, section twenty-one, sections thirty-one to forty-six, sections fifty to fifty-six, in subsection (1), of section sixty-five the definitions of "clearing", "ecclesiastical property", "first local advertisement", "interim development application", "interim development authority", "loan charges", "local highway authority", "local planning authority", "planning scheme", "purchase order providing for expedited completion", "Valuation Office" and "war damage"; subparagraphs (1) (a), (1) (b) and (1) (d) of paragraph 1, and the word "or" at the end of subparagraph (a) and subparagraph (b) of paragraph 3 of the First Schedule, the Second and Third Schedules, paragraphs 1 to 8 and 10 of the Fifth Schedule, and paragraph 12 of the Sixth Schedule.
8 & 9 Geo. 6, c. 15.	The Licensing Planning (Temporary Provisions) Act, 1945.	Subsection (5) of section ten and subsections (2) and (3) of section thirteen.
8 & 9 Geo. 6, c. 36.	The Distribution of Industry Act, 1945.	Sections six, nine and ten.
9 & 10 Geo. 6, c. 18.	The Statutory Orders (Special Procedure) Act, 1945.	In section eight, in subsection (2), paragraph (a) and the words from "requirements imposed" to the words "by order, and the".  In the Second Schedule, in the amendments of the Town and Country Planning Act, 1944, the words "subsections (4) and (5) of section thirteen," "subsections (1) and (2) of section fourteen," "subsection (3) of section thirty-five," and "paragraphs (d) and (e) of subsection (1) of section thirty-six,"; and the words from "section sixteen" to "were omitted".

Session and Chapter	Enactment repealed	Extent of repeal
9 & 10 Geo. 6, c. 30.	The Trunk Roads Act, 1946.	In section three, the proviso to subsection (2) and subsection (3); in section four, in subsection (2) the words from "and without prejudice" to the end of the subsection; in section eight, subsection (5); in section twelve, subsection (2); and in the Third Schedule, in the amendment of section four of the Trunk Roads Act, 1936, the words from the beginning to "as the case may be".
9 & 10 Geo. 6, c. 35.	The Building Restrictions (War-Time Contraventions) Act, 1946.	Subsection (2) of section four.
9 & 10 Geo. 6, c. 49.	The Acquisition of Land (Authorisation Procedure) Act, 1946.	Paragraph (c) of subsection (4) of section one; in section two, in subsection (1) the words "or of the Town and Country Planning Act, 1944", and in subsection (4) the words "the Town and Country Planning Act, 1944"; in the First Schedule, sub-paragraph (2) of paragraph 15, and in the Second Schedule, in paragraph 9 the words "or in subsection (4) of section eighteen of the Town and Country Planning Act, 1944."
9 & 10 Geo. 6, c. 68.	The New Towns Act, 1946.	Subsections (3) and (4) of section three and the Third Schedule. [2736]

*Appointed day.*—This means such day as the Minister of Town and Country Planning may by order appoint (s. 119 (1), *ante*). July 1, 1948, has been so appointed (S.I. 1948 No. 213).

*Advertising Stations (Rating) Act*, 1889, s. 5.—14 Halsbury's Statutes 598.

*Advertisements Regulation Act*, 1907.—13 Halsbury's Statutes 908.

*Public Health Acts Amendment Act*, 1907, s. 91.—13 Halsbury's Statutes 944.

*Advertisements Regulation Act*, 1925.—13 Halsbury's Statutes 1113.

*Roads Improvement Act*, 1925, s. 5 (7).—9 Halsbury's Statutes 225.

*Law of Property (Amendment) Act*, 1926.—For the Schedule thereto, see 15 Halsbury's Statutes 549.

*Petroleum Consolidation Act*, 1928, s. 11.—13 Halsbury's Statutes 1176.

*Ancient Monuments Act*, 1931, s. 2.—24 Halsbury's Statutes 298.

*Town and Country Planning Act*, 1932.—25 Halsbury's Statutes 470.

*Local Government Act*, 1933, *Sched. VII*.—26 Halsbury's Statutes 509.

*Restriction of Ribbon Development Act*, 1935.—For ss. 1-3, 5-12, 13 (3) (a), 15, 18 (1), (2), 19 (2), (3), (4), 23 (1) and 24 (1), (2) thereof, and Schedules I, II and III thereto, see 28 Halsbury's Statutes 81-83, 84-90, 92, 94, 95, 96, 97, 98, 100, 101.

*Public Health Act*, 1936, ss. 107 (1), 343 (1).—29 Halsbury's Statutes 403, 536.

*Housing Act*, 1936, ss. 16 (4), 188 (1).—29 Halsbury's Statutes 579, 680.

*Trunk Roads Act*, 1936.—For s. 4 (2)-(5) thereof, and *Sched. IV*, paras. 1-5, thereto, see 29 Halsbury's Statutes 189, 190, 214, 215.

*Camps Act*, 1939, s. 3 (2).—32 Halsbury's Statutes 804.

*Civil Defence Act*, 1939, s. 70.—32 Halsbury's Statutes 878.

*London Government Act*, 1939, *Sched. V*.—32 Halsbury's Statutes 374.

*Minister of Town and Country Planning Act, 1943, s. 6 (1) and Sched. I.*—36 Halsbury's Statutes 41, 43.

*Town and Country Planning (Interim Development) Act, 1943.*—36 Halsbury's Statutes 239.

*Restriction of Ribbon Development (Temporary Development) Act, 1943.*—36 Halsbury's Statutes 130.

*Town and Country Planning Act, 1944.*—For ss. 1-14, 16-18, 20 (3), 21, 31-46, 50-56 and 65 (1) thereof, and Sched. I, paras. 1 (1) (a), (b), (d), 3 (a), (b), Schedules II and III, Sched. V, paras. 1-8, 10, and Sched. VI, para. 12, thereto, see 37 Halsbury's Statutes 423-443, 445-446, 450, 451, 460-471, 472-476, 482, 483, 484, 486, 488, 489, 490, 493.

*Licensing Planning (Temporary Provisions) Act, 1945, ss. 10 (5), 13 (2), (3).*—38 Halsbury's Statutes 286, 287.

*Distribution of Industry Act, 1945, ss. 6, 9, 10.*—38 Halsbury's Statutes 482, 484.

*Statutory Orders (Special Procedure) Act, 1945, s. 8 (2) and Sched. II.*—38 Halsbury's Statutes 445, 448.

*Trunk Roads Act, 1946.*—39 Halsbury's Statutes 149. For ss. 3 (2), (3), 4 (2), 8 (5) and 12 (2) thereof, and Sched. III thereto, see 39 Halsbury's Statutes 154, 155, 160, 162, 178.

*Building Restrictions (War-Time Contraventions) Act, 1946, s. 4 (2).*—39 Halsbury's Statutes 906.

*Acquisition of Land (Authorisation Procedure) Act, 1946.*—39 Halsbury's Statutes 52. For ss. 1 (4) (c), 2 (1) and (4) thereof, and Sched. I, para. 15 (2), and Sched. II, para. 9, thereto, see 39 Halsbury's Statutes 55, 56, 66 and 68.

*New Towns Act, 1946, s. 3 (3), (4) and Sched. III.*—39 Halsbury's Statutes 666, 684.

## Section 113

## TENTH SCHEDULE

### TRANSITORY PROVISIONS AND PROVISIONS CONSEQUENTIAL ON REPEALS

1. Any application for permission to develop land made to the interim development authority before the appointed day under section ten of the Act of 1932, and any application for permission to develop land made to the responsible authority under a planning scheme, being in either case an application which has not been determined by that authority before that day, shall be treated for the purposes of this Act as an application made to the local planning authority for planning permission for the like development, and shall be treated as having been so made on the appointed day.

2. Where an application for any such permission as aforesaid, made to the interim development authority or the responsible authority before the appointed day, has been determined by that authority before that day and no appeal has been brought against the decision, then if the period during which such an appeal could have been brought before the appointed day has not expired, the decision of the interim development authority or the responsible authority, as the case may be, shall be treated for the purposes of section sixteen of this Act as the decision of a local planning authority on an application for planning permission.

3. Any appeal to the Minister from the decision of the interim development authority or the responsible authority on any such application as aforesaid which is pending on the appointed day shall be treated as an appeal to the Minister under section sixteen of this Act :

Provided that where under subsection (5) of section ten of the Act of 1932, any such hearing as is required by that subsection has been held before the appointed day, the proviso to subsection (2) of section fifteen of this Act shall not apply in relation to the appeal.

4. Any direction given before the appointed day under section six of the Town and Country Planning (Interim Development) Act, 1943, requiring any such application as aforesaid to be referred to the Minister shall be treated as a direction given by the Minister to the local planning authority under section fifteen of this Act :

Provided that where, under section six of the Town and Country Planning (Interim Development) Act, 1943, any such hearing as is required by that section has been held before the appointed day, the proviso to subsection (2) of section fifteen of this Act shall not apply in relation to the application.

5. Any application for consent for the development of land made by a local authority before the appointed day under section thirty-two of the Act of 1944 which has not been finally determined before that day shall be treated for the purposes of this Act as if it were an application for planning permission for the like development made by a local planning authority in pursuance of regulations made under section thirty-five of this Act.

6. Any order made before the appointed day by an authority empowered in that behalf by an interim development order in pursuance of subsection (8) of section ten of the Act of 1932 and any order made before that day by the Minister under subsection (2) of section thirty-nine of the Act of 1944, shall continue in force after that day and have effect as if it were included in a development order in pursuance of subsection (4) of section thirteen of this Act.

7. Notwithstanding the repeal by this Act of the Act of 1932, any scheme made under that Act and any such scheme as is mentioned in section fifty-four of that Act, being a scheme which is in force immediately before the appointed day shall, so far as it relates to the following matters, that is to say—

- (a) the designation of responsible authorities, and the constitution of joint bodies as responsible authorities ;
- (b) the preservation of trees and the protection of woodlands ;
- (c) the control of advertisements in areas protected under section forty-seven of the Act of 1932 ;
- (d) the execution of street works, and the recovery of charges in respect thereof, by the responsible authority ; and
- (e) the suspension of any enactment contained in a local Act or of any byelaws, orders or regulations ;

continue in force until it is determined, in relation to any such matter as aforesaid, by an order made by the Minister, and the provisions of that Act, or of the Town Planning Act, 1925, as the case may be, shall have effect in relation to any such scheme accordingly.

8. Any order made by the Minister under the last foregoing paragraph may make such provision as the Minister considers expedient for winding up the scheme, including provision—

- (a) for the dissolution of any joint body constituted as the responsible authority thereunder ;
- (b) for the transfer to such authorities as may be prescribed by the order of officers, property, rights and liabilities of any such body, and for the compensation of any such officers.

9. Notwithstanding the repeal by this Act of section seventeen of the Act of 1932 and sections forty-two and forty-three of the Act of 1944—

- (a) any order made by a local planning authority or by the council of any county district under the said section seventeen which is in force immediately before the appointed day shall so far as is consistent with the provisions of section twenty-nine of this Act, continue in force and have effect as if it had been made by the local planning authority under that section ; and any such order may be amended or revoked under this Act accordingly ;
- (b) any list compiled or approved by the Minister under the said section forty-two before the appointed day shall continue in force and have effect as if it had been compiled or approved by him under section thirty of this Act, and may be amended under that section accordingly, and subsection (3) of the said section thirty shall apply to any copy of any such list or of amendments thereto deposited before the appointed day with the clerk of the council of any county borough or county district.

10. Subject as hereinafter provided, any agreement for restricting the planning, development or use of land made under section thirty-four of the Act of 1932 with any such authority as is mentioned in subsection (2) of that section, or made or having effect as if made under a planning scheme with the responsible authority for the purposes of the scheme, shall, if in force on the appointed day, continue in force in accordance with the terms thereof and may be enforced under the said section thirty-four or under the scheme, as the case may be :

Provided that—

- (a) nothing in any such agreement shall be construed as restricting the exercise, in relation to land to which any such agreement applies, of any powers exercisable by any Minister or authority under this Act so long as those powers are exercised in accordance with the provisions of the development plan or in accordance with any directions which may have been given by the Minister under section thirty-six of this Act, or as requiring the exercise of any such powers otherwise than as aforesaid :

- (b) if the Minister is satisfied, on application made to him by any person being a party to any such agreement, or a person entitled to land affected thereby or by the local planning authority, that any restriction on the development or use of the land imposed by the agreement is inconsistent with the proper planning or development of the area comprising the land, he may by order discharge or modify that restriction so far as appears to him to be expedient ;
- (c) without prejudice to the provisions of the foregoing paragraph, if any person being a party to any such agreement (whether as originally made or as modified under the foregoing paragraph), or a person entitled to land affected thereby, claims that the agreement ought to be modified or rescinded having regard to the provisions of this Act or anything done thereunder, he may refer to arbitration the question whether the agreement should be so modified or rescinded, and the arbitrator may make such award as appears to him to be just having regard to all the circumstances.

11. Where any such agreement as is mentioned in the last foregoing paragraph is modified or rescinded (whether by agreement or by virtue of the exercise of any powers conferred by sub-paragraph (b) or (c) of the proviso to that paragraph) at any time within three years after the appointed day, then if it appears to the Minister that it is reasonable so to do having regard to the terms on which the agreement was made and to any loss or damage sustained by any person having an interest in land affected by the agreement by reason of the provisions of this Act or of anything done thereunder, he may direct that the development value of that interest in the land, or in any part thereof, shall be calculated for the purposes of Part VI of this Act as if the agreement had been so modified or rescinded immediately before the appointed day.

12. The repeal of section fifty-one of the Act of 1932 shall not affect the rights of any person arising under that section in consequence of any event occurring before the appointed day.

13. Provision may be made by regulations under this Act for securing—

- (a) that any application to a highway authority under the Restriction of Ribbon Development Act, 1935, for any consent which that authority have power to give under section one or section two of that Act, being an application which has not been determined by that authority before the appointed day, shall be treated for the purposes of this Act as an application made to the local planning authority for planning permission, and shall be treated as having been so made on the appointed day ;
- (b) that any decision of a highway authority on an application for such a consent under the Restriction of Ribbon Development Act, 1935, shall, unless the applicant has appealed against that decision under section seven of that Act before the appointed day, be treated for the purposes of section sixteen of this Act as the decision of a local planning authority on an application for planning permission ; and
- (c) that any appeal to the Minister of Transport under the said section seven which is pending on the appointed day shall be treated as an appeal to the Minister under section sixteen of this Act :

Provided that where under the said section seven any such local inquiry as is required by that section has been held before the appointed day, the proviso to subsection (2) of section fifteen of this Act shall not apply in relation to any such appeal.

14. Notwithstanding the repeal by this Act of the Restriction of Ribbon Development (Temporary Development) Act, 1943, an Order in Council may be made under subsection (6) of section one of that Act for appointing the date on which the present war period within the meaning of that Act is to end.

15. Notwithstanding the repeal by this Act of section eight of the Town and Country Planning (Interim Development) Act, 1943, any order made by an interim development authority under that section for the preservation of trees and woodlands pending the coming into operation of a scheme under the Act of 1932, being an order



which is in force immediately before the appointed day, shall, so far as is consistent with the provisions of section twenty-eight of this Act, continue in force and have effect as if it had been made by the local planning authority under that section, and as if for references therein to the interim development authority there were substituted references to the local planning authority; and any such order may be amended or revoked under this Act accordingly.

16. Where, at any time before the appointed day, application has been made to the Minister for an order under section one of the Act of 1944 declaring any land to be subject to compulsory purchase under Part I of that Act, the Minister may, if he thinks fit, direct that proceedings on the application shall be continued under that Act after that day; and where any such direction is given, section one of the Act of 1944, and section thirteen of that Act and the First Schedule to that Act so far as they relate to an order under the said section one, shall continue to apply in relation to the application, and an order may be made thereon accordingly.

17. Where any order has been made before the appointed day under section one of the Act of 1944 declaring any land to be subject to compulsory purchase under Part I of that Act or where any such order has been made after the appointed day by virtue of the last foregoing paragraph, the provisions of Part IV of this Act shall apply as if the land were comprised in an area defined by the development plan under Part II of this Act as an area of comprehensive development, and were designated as subject to compulsory acquisition under this Act by the appropriate local authority, and section sixteen of the Act of 1944 (which relates to the validity and date of operation of such orders) shall, notwithstanding the repeal of that section, apply in relation to any such order:

Provided that—

- (a) this paragraph shall not apply to any operational land of statutory undertakers unless an order made under paragraph (b) of subsection (5) of section thirteen of the Act of 1944 declaring that it is expedient that the land should be subject to compulsory purchase has taken effect;
- (b) nothing in this paragraph shall be construed as restricting the power of the Minister of Works or the Postmaster General to acquire any land to which this paragraph applies under subsection (2) of section thirty-seven of this Act.

18. Any compulsory purchase order made or prepared in draft under Part I of the Act of 1944 before the appointed day may be confirmed or made in accordance with the provisions of that Part after that day, and any such order, and any compulsory purchase order confirmed or made under that Part before the appointed day, shall continue in force and have effect as if it had been made under the Acquisition of Land (Authorisation Procedure) Act, 1946 as applied by Part IV of this Act.

19. For the purposes of the Act of 1944 as amended by this Act—

- (a) any land acquired by a Minister in pursuance of any such order as is mentioned in the last foregoing paragraph shall be deemed to have been acquired under section thirty-seven of this Act;
- (b) any land acquired by a local authority in pursuance of any such order as aforesaid shall be deemed to have been acquired under section thirty-eight of this Act;
- (c) any land acquired by a local authority by agreement under the Act of 1944 shall be deemed to have been acquired under section forty of this Act.

20. The Secretary of State may by order revoke or vary any order made under the Licensing Planning (Temporary Provisions) Acts, 1945 and 1946, so far as may be necessary or expedient in consequence of the provisions of this Act amending those Acts, or in consequence of any order made under section four of this Act constituting a joint board as the local planning authority in any area which comprises, or the whole or part of which is included in, a licensing planning area, but subject as aforesaid nothing in this Act or in any order made under the said section four shall affect the validity of any order made under the said Acts before the appointed day, or before the date of the order under the said section four, as the case may be, or of anything done under any such order. [2737]

*Changes affected.*—By s. 113 (5), *ante*, the provisions of this Schedule, comprising miscellaneous transitional provisions, are to have effect in relation to the repeals effected by that section (see also Sched. IX, *ante*). The Schedule provides for the continuation of any planning action which is in the course of being taken on July 1, 1948, the appointed day (see *infra*).

*Effect of Schedule.*—Where an interim development application has been made, but not decided on the appointed day, it will become an application for planning permission under s. 14 of the present Act, *ante* (para. 1, *ante*). If such an application has been refused or granted subject to conditions and the period of 28 days for appeal allowed under s. 10 (5) of the 1932 Act (25 Halsbury's Statutes 483) has not elapsed, then an appeal may be made to the Minister under s. 16, *ante*, as if the decision given by the interim development authority had been a decision of the local planning authority under s. 14, *ante* (para. 2, *ante*). Any appeal which has been lodged will be treated as an appeal under s. 16, but where there has already been a hearing there will be no further hearing (para. 3, *ante*).

Similarly, any application to a local highway authority under s. 1 or 2 of the Restriction of Ribbon Development Act, 1935 (28 Halsbury's Statutes 81, 82), will become an application to the local planning authority and s. 16 of the present Act, *ante*, will apply to appeals in place of s. 7 of the 1935 Act (28 Halsbury's Statutes 85), and such appeals will lie to the Minister of Town and Country Planning and not to the Minister of Transport (para. 13, *ante*).

The following provisions in operative schemes are continued in force (para. 7, *ante*) until determined by an order of the Minister, notwithstanding the repeal of the 1932 Act (25 Halsbury's Statutes 470 *et seq.*):—

- (1) Provisions concerned with the designation of responsible authorities and the constitution of joint bodies as responsible authorities;
- (2) Provisions for the preservation of trees and woodlands;
- (3) Provisions controlling advertisements under s. 47 of the 1932 Act (25 Halsbury's Statutes 513);
- (4) Provisions relating to the execution of street works and the recovery of charges in respect of them; and
- (5) Provisions suspending enactments contained in local Acts, byelaws, orders or regulations.

Existing "building preservation orders" and "tree preservation orders" are continued until amended (paras. 9 and 15, *ante*).

Agreements under s. 34 of the 1932 Act (25 Halsbury's Statutes 506) are continued in force but are not to be construed as affecting the exercise of any powers, given under the present Act, which are exercised in accordance with the provisions of the development plan or directions given by the Minister under s. 36, *ante*. Restrictions imposed by an agreement under s. 34 may be discharged by the Minister or by an arbitrator (paras. 10 and 11, *ante*).

This power to vary or discharge restrictions imposed by a s. 34 agreement should be examined carefully. Para. 11 provides that where the agreement is discharged or modified within three years after the appointed day the Minister may direct that the calculation of the development value is to be based on the assumption that the discharge or modification had taken place immediately before July 1, 1948. In this regard, note the provisions of proviso (c) to para. 10, *ante*, which entitle application to be made for arbitration on a claim that the agreement should be modified or rescinded "having regard to the provisions of this Act or anything done thereunder."

Lands affected by declaratory orders under the 1944 Act (37 Halsbury's Statutes 420 *et seq.*) which have not been purchased are to be regarded (para. 17, *ante*) as if they had been designated in a development plan under the present Act (see the notes to s. 38, *ante*).

Provision is also made in this Schedule for the revocation or variation of licensing planning orders where this is rendered necessary or expedient by reason of any amendment of the Licensing Planning (Temporary Provisions) Acts, 1945 and 1946 (38 Halsbury's Statutes 279; 39 Halsbury's Statutes 223), effected by the present Act (para. 20, *ante*). This provision is occasioned by the fact that the local planning authority under the present Act ceases to be the county district council.

*Appointed day.*—This means such day as the Minister of Town and Country Planning may by order appoint (see ss. 119 (1) and 120, *ante*). July 1, 1948, has been so appointed (S.I. 1948 No. 213).

*S. 10 of the 1932 Act.*—25 Halsbury's Statutes 482. This section provided for the making of interim development orders by the Minister to control the development of land in the period between the resolution to prepare a scheme and the actual coming into operation of the scheme. The order might be either a general one, or a special one with respect to land in any particular area. The order might itself permit development or empower any specified authority to grant permission for such development either conditionally or unconditionally. An appeal lay to the Minister against any refusal to grant consent or against any conditions imposed on the grant.

*Local planning authority.*—See ss. 4 and 34, *ante*; and as to London, see s. 114, *ante*. As to applications to the local planning authority, see ss. 14 and 34, *ante*.

*S. 16 of this Act.*—See *ante*. This section is concerned with appeals to the Minister against the decision of the local planning authority. It replaces s. 10 (5) of the 1932 Act (25 Halsbury's Statutes 483).

*The Minister.*—The Minister of Town and Country Planning (s. 1, *ante*).

*S. 6 of the Town and Country Planning (Interim Development) Act, 1943.*—36 Halsbury's Statutes 247. This section is replaced in the present Act by s. 15, *ante*. It enabled the Minister to direct that interim development applications should be referred to him. The proviso to sub-s. (2) of s. 15, *ante*, makes similar provision for a hearing to that contained in the proviso to s. 6 (1) of the 1943 Act.

*S. 32 of the Act of 1944.*—37 Halsbury's Statutes 460.

*Regulations and orders.*—For the general provisions applicable to regulations and orders under the Act, see s. 111, *ante*.

S. 35.—See *ante*. This section deals with the application of the control of development provisions to development by local authorities and statutory undertakers.

Para. 6.—This paragraph is concerned with suspensions of enactments for planning purposes which have been effected under previous planning legislation. For s. 10 (8) of the Act of 1932, see 25 Halsbury's Statutes 484; and for s. 39 (2) of the Act of 1944, see 37 Halsbury's Statutes 466.

*Repeal of the Act of 1932.*—See ss. 113, 120, and the Sched. IX, Part II, *ante*. The repeal takes effect as from July 1, 1948, the appointed day.

S. 54 of the Act of 1932.—25 Halsbury's Statutes 522. This section was concerned, *inter alia*, with continuing in force schemes made under the Town Planning Act, 1925 (13 Halsbury's Statutes 1079 *et seq.*), which was repealed by the 1932 Act. For s. 47 of the 1932 Act, see 25 Halsbury's Statutes 513.

*Town Planning Act, 1925.*—13 Halsbury's Statutes 1079 *et seq.*

Para. 9.—This paragraph is concerned with existing "building preservation orders" under s. 17 of the 1932 Act (25 Halsbury's Statutes 490) and s. 43 of the 1944 Act (37 Halsbury's Statutes 467), and lists of buildings compiled under s. 42 of the latter Act (37 Halsbury's Statutes 467).

*List compiled or approved by the Minister.*—For the present position as to publication of lists of buildings of special architectural or historic interest, see 445 H. of C. Official Report 1497.

S. 34 of the Act of 1932.—25 Halsbury's Statutes 506. This section was concerned with empowering authorities and owners to enter into agreements restricting the use of land. For a corresponding provision in the present Act, see s. 25, *ante*.

S. 36 of this Act.—See *ante*. This section enables the Minister to give directions as to provisions which are to be included in the development plan.

*If the Minister is satisfied; if he thinks fit.*—See note to s. 4, *ante*, on the phrase "If it appears to the Minister."

*Development value.*—For manner of ascertainment, see s. 61, *ante*.

S. 51 of the Act of 1932.—25 Halsbury's Statutes 518. This section is concerned with the payment of compensation to officers.

*Restriction of Ribbon Development Act, 1935.*—28 Halsbury's Statutes 79 *et seq.* Ss. 1 and 2 of this Act were concerned with controlling means of access to and the erection of buildings within certain distances of classified roads and roads of certain standard widths. Such development required the consent of the appropriate highway authority.

S. 7 of the same Act (28 Halsbury's Statutes 85) provided for the conditions of such consent, and also for an appeal by an aggrieved applicant to the Minister of Transport against the decision of the highway authority.

*Restriction of Ribbon Development (Temporary Development) Act, 1943.*—36 Halsbury's Statutes 130. As to the repeal of this Act as from July 1, 1948, see ss. 113, 120, and Sched. IX, Part II, *ante*.

Where after the war period action is taken under s. 11 of the Restriction of Ribbon Development Act, 1935 (28 Halsbury's Statutes 90), note the definition of "building law" contained in s. 7 (1) of the Building Restrictions (War-Time Contraventions) Act, 1946 (39 Halsbury's Statutes 907).

Para. 15.—This paragraph is concerned with providing a saving for "tree preservation orders" under previous planning legislation. For the relevant provisions of the present Act, see s. 28, *ante*.

As to the repeal as from July 1, 1948, of s. 8 of the Town and Country Planning (Interim Development) Act, 1943 (36 Halsbury's Statutes 248), see ss. 113, 120 and Sched. IX, Part II, *ante*.

S. 1 of the Act of 1944.—37 Halsbury's Statutes 423. This section provided for the making of orders declaring areas of extensive war damage subject to compulsory purchase and also for declaring subject to compulsory purchase other lands required for relocation of population and industries made necessary by the re-development of the war-damaged lands.

The effect of a declaratory order under s. 1 of the 1944 Act, *supra*, is not substantially different from designation in the development plan under s. 5, *ante*, in an area of comprehensive development.

S. 13 of the Act of 1944.—37 Halsbury's Statutes 441. This section imposed certain limitations on the acquisition of operational lands of statutory undertakers, and, in particular, made such acquisitions in certain circumstances subject to special parliamentary procedure (see note to s. 5, *ante*).

Under s. 5 (4) (c), *ante*, where such lands are designated in the development plan, the order will be subject to such procedure. Since the declaratory order has not been subject to such procedure the lands retain the protection of s. 13 of the 1944 Act, *supra*.

For Sched. I. to the 1944 Act, see 37 Halsbury's Statutes 483.

Part I of the Act of 1944.—This comprises ss. 1 to 56 inclusive (37 Halsbury's Statutes 423-476).

*Acquisition of Land (Authorisation Procedure) Act, 1946.*—39 Halsbury's Statutes 52. As originally enacted, this Act did not apply to purchases under the 1944 Act (37 Halsbury's Statutes 420) except in cases where the speedy procedure of s. 2 of the 1946 Act (39 Halsbury's Statutes 56) was invoked.

S. 37 of this Act.—See *ante*. This section deals with the compulsory acquisition of land by Ministers, local authorities and statutory undertakers.

S. 38.—See *ante*. This section provides for the acquisition of land for development purposes.

*Acquired by agreement, etc.*—See ss. 2 (3), 3 (6), 10 (4) and 43 (9) of the 1944 Act (37 Halsbury's Statutes 427, 429, 436, 468).

*Licensing Planning (Temporary Provisions) Acts, 1945 and 1946.*—38 Halsbury's Statutes 279; 39 Halsbury's Statutes 223. These Acts are concerned with the re-siting and distribution of licensed premises in war-damaged areas and areas of relocation.

*Constituting a joint board.*—See s. 4 and Sched. I, Part I, *ante*.

*Licensing planning area.*—For definition of this term, see s. 1 of the Licensing Planning (Temporary Provisions) Act, 1945 (38 Halsbury's Statutes 280), as amended by s. 1 of the Licensing Planning (Temporary Provisions) Act, 1946 (39 Halsbury's Statutes 224).

*Definitions.*—As to "develop," "development" and "planning permission," see ss. 12 and 119 (1), *ante*; as to "development order," see ss. 13 and 119 (1), *ante*; and as to "development plan," see ss. 5 and 119 (1), *ante*. For definitions of "land," "interim development authority," "Act of 1932," "planning scheme," "local authority," "interim development order," "Act of 1944," "advertisement," "enactment," "use," "a Minister," "operational land" and "statutory undertakers," see s. 119 (1), *ante*. Other definitions appear in the notes *supra*.

## Section 113

## ELEVENTH SCHEDULE

UNREPEALED PROVISIONS OF THE TOWN AND COUNTRY PLANNING ACT, 1944,  
REPRINTED AS AMENDED BY THIS ACT

**15. Provisions as to purchase of licensed premises.**—Where land purchased under Part IV of the Town and Country Planning Act, 1947, not being land comprised in a licensing planning area within the meaning of the Licensing Planning (Temporary Provisions) Acts, 1945 and 1946, comprises premises in respect of which an old on-licence is in force, the following provisions shall have effect :—

- (a) the purchasing authority, before purchasing the premises, may undertake that in the event of the renewal of the licence being refused, they will repay to the compensation authority towards the compensation payable on such refusal under the Licensing (Consolidation) Act, 1910, such contribution as may be specified in the undertaking, and any sum payable by the purchasing authority in pursuance of such an undertaking shall be treated as part of their expenses in purchasing the land ;
- (b) if, after purchasing or contracting to purchase the premises, the purchasing authority intimate to the licensing justices that they are willing to surrender the licence, the licensing justices may refer the matter to the compensation authority and that authority, on being satisfied that the licence, if not surrendered, might properly have been dealt with as a redundant licence, shall contribute out of the compensation fund towards the compensation paid by the purchasing authority in respect of the purchase of the premises a sum not exceeding the compensation which would have been payable under the Licensing (Consolidation) Act, 1910, on the refusal of the renewal of the licence. [2738]

*General note.*—This section reproduces provisions originally appearing in s. 9 of the Housing Etc. Act, 1923, later included in s. 47 of the Housing Act, 1925 (13 Halsbury's Statutes 1029), subsequently in s. 14 of the Housing Act, 1930 (23 Halsbury's Statutes 406), extended by s. 16 (4) of the Housing Act, 1935 (28 Halsbury's Statutes 214) and reproduced (as extended) in s. 47 of the Housing Act, 1936 (29 Halsbury's Statutes 602).

As from July 1, 1948, the words "Part IV of the Town and Country Planning Act, 1947, not being land comprised in a licensing planning area within the meaning of the Licensing Planning (Temporary Provisions) Acts, 1945 and 1946," are substituted by s. 113 of and Sched. VIII to the 1947 Act, *ante*, for the words "this Part of this Act."

*Licensing planning area.*—For definition, see s. 1 of the Licensing Planning (Temporary Provisions) Act, 1945 (38 Halsbury's Statutes 280), as amended by s. 1 of the Licensing Planning (Temporary Provisions) Act, 1946 (39 Halsbury's Statutes 224).

*Old on-licence.*—This term is not defined in the Act. Sched. II, Part I, to the Licensing (Consolidation) Act, 1910 (9 Halsbury's Statutes 1047), contains a description of old on-licences for the purposes of that Act. The main test is whether a justices' on-licence, other than a licence for the sale of wine alone or sweets alone, was in force on August 15, 1904, but reference should be made to the Schedule above referred to.

*Compensation payable.*—As to the payment of compensation on the refusal of the compensation authority to renew an old on-licence, see s. 20 of the Licensing (Consolidation) Act, 1910 (9 Halsbury's Statutes 1000).

*Redundant licence.*—For a consideration of what constitutes a redundant licence and decisions in respect thereof, reference should be made to Paterson's Licensing Acts.

*Shall.*—The licensing justices have, it is submitted, a discretion whether or not to refer the matter to the compensation authority, but where the matter is so referred, a contribution must be made by the compensation authority if they are satisfied that the licence might properly have been dealt with as a redundant licence.

*Compensation which would have been payable.*—See s. 20 of the Licensing (Consolidation) Act, 1910 (9 Halsbury's Statutes 1000).

**19. Disposal or appropriation by local authorities of land held by them for purposes of Part IV of the Town and Country Planning Act, 1947.**—(1) The following provisions of this section shall have effect with respect to the disposal or appropriation by a local authority of land which has been acquired under section thirty-eight or

section forty of the Town and Country Planning Act, 1947, or appropriated for purposes for which land can be acquired under those sections, and is for the time being held by the authority for the purposes for which it was acquired or appropriated.

(2) Subject to the provisions of subsections (4) and (5) of this section, the authority may dispose of any such land to such person, in such manner and subject to such conditions as may appear to them to be expedient in order to secure the best use of that or other land and any buildings or works which have been, or are to be, erected, constructed or carried out thereon, whether by themselves or by any other person, or to secure the erection, construction or carrying out thereon of any buildings or works appearing to them to be needed for the proper planning of the area of the authority.

(3) Subject to the provisions of subsection (4) of this section, the authority may appropriate any such land for any purpose for which they are or may be authorised in any capacity to acquire land by virtue of or under any enactment other than Part IV of the Town and Country Planning Act, 1947, and, in relation to an appropriation under this subsection, subsections (2) and (3) of section one hundred and sixty-three of the Local Government Act, 1933, and subsections (2) and (3) of section one hundred and six of the London Government Act, 1939 (which relate to the operation of section sixty-eight of the Lands Clauses Consolidation Act, 1845, and to adjustments in accounts, on appropriations under those sections respectively) shall have effect as they have effect in relation to appropriations under those sections respectively.

(4) The consent of the Minister shall be requisite to any disposal or appropriation of land by a local authority under this section, and may be given as respects either a particular disposal or appropriation or disposals or appropriations of any class, and either subject to or free from any conditions or limitations.

(5) The consent of the Minister to a sale by a local authority under this section of the freehold in any land, or to a lease by them thereunder of any land for a term of more than ninety-nine years, shall not be given unless he is satisfied that there are exceptional circumstances which render the disposal of the land in that manner expedient as mentioned in subsection (2) of this section.

(6) The powers conferred by this section on a local authority in respect of the disposal of land thereunder, and on the Minister in respect of consent to such disposal, shall, in the case of land comprised in an area defined by a development plan as an area of comprehensive development or of land contiguous or adjacent to any such area which is designated by the development plan as subject to compulsory acquisition by the appropriate authority, be so exercised as to secure so far as may be practicable to persons who were living or carrying on business or other activities, on any such land which the authority have acquired as mentioned in subsection (1) of this section, who desire to obtain accommodation on such land, and who are willing to comply with any requirements of the authority as to the development and use of such land, an opportunity to obtain thereon accommodation suitable to their reasonable requirements on terms settled with due regard to the price at which any such land has been acquired from them.

(7) If it appears to the Minister that it is expedient as mentioned in subsection (2) of this section that a local authority should dispose of land under this section to any person and the authority have refused to dispose of it to him or are unable to reach agreement with him as to the manner in which or the terms or conditions on or subject to which it is to be disposed of to him, the Minister may, after consultation with the authority and that person, require the authority to offer to dispose of it to him, and give directions as to the manner of the disposal and as to all or any of the terms or conditions on or subject to which it is to be offered to him :

Provided that the authority shall not be required by any such directions (except to such extent as may appear to the Minister to be requisite in any particular case for giving effect to the last preceding subsection) to offer to dispose of land for a money consideration less than the best that can reasonably be obtained, having regard to the other terms and conditions on and subject to which the offer is to be made, so, however, that in estimating the best consideration any amount which only a particular purchaser might be prepared to offer by reason of special needs of his shall be disregarded, and any difference as to what is the best consideration shall be referred to and determined by an arbitrator agreed between the Minister and the authority or, in default of agreement, by an official arbitrator to be appointed

in accordance with the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919.

(8) In the exercise of the powers conferred by this section, a local authority shall have regard to the desirability of preserving features of special architectural or historic interest, and in particular buildings included in any list compiled or approved under the provisions of section thirty of the Town and Country Planning Act, 1947, and the Minister shall not give his consent to the disposal or appropriation under this section of any land comprising a building included in such a list unless either—

- (a) the consent is given subject to such conditions or limitations as in the opinion of the Minister will secure the preservation of the building ; or
- (b) the Minister is satisfied, after causing such particulars as appear to him requisite of the disposal or appropriation for which his consent is sought to be published by Gazette and local advertisement not less than twenty-eight days before he gives his decision on the application for his consent, that the purpose which the local authority seek to achieve by the proposed exercise of their powers under this section is one which ought in the public interest to be carried out, and either that the preservation of the building would prevent the carrying out of that purpose, whether by the use of the land in question or otherwise, or that the effect of preserving the building on the carrying out as aforesaid of the said purpose would be such that notwithstanding the desirability of preserving the building it is inexpedient so to do.

In this subsection the expression “preservation,” in relation to a building, means the preservation thereof either in its existing state or subject only to such alterations or extensions as can be carried out without serious detriment to its character.

(9) In this section references to disposal of land shall be construed as references to disposal thereof in any manner (otherwise than by appropriation) whether by way of sale, exchange or lease, by the creation of any easement, right or privilege, or in any other manner, except disposal by way of gift, mortgage or charge.

(10) In relation to any such land as is mentioned in subsection (1) of this section, this section shall have effect to the exclusion of the provisions of subsection (1) of section one hundred and sixty-three and sections one hundred and sixty-four and one hundred and sixty-five of the Local Government Act, 1933, or of subsection (1) of section one hundred and six and sections one hundred and seven and one hundred and eight of the London Government Act, 1939, as the case may be.

(11) Section one hundred and sixty-six of the Local Government Act, 1933, and section one hundred and nine of the London Government Act, 1939 (which relate to the application of capital money received from the disposal of land) shall have effect as respects capital money received in respect of transactions under the provisions of this section relating to the disposal of land as they have effect in relation to capital money received in respect of such transactions as are mentioned in those sections respectively. [2739]

*S. 38 or s. 40.*—See *ante*. S. 38 of the 1947 Act deals with the compulsory acquisition of land for development, and s. 40 of the same Act deals with the acquisition of land by agreement for a similar purpose.

*Amendments to the section.*—As from July 1, 1948, this section is brought into line with the changes effected by the 1947 Act by the amendments set out in Sched. VIII, *ante*.

*Sub-s. (2).*—This subsection, which is unamended, confers general power to dispose of land acquired or appropriated for development. Normally the freehold of the land will not be parted with, but leases will be granted for a period not exceeding 99 years (sub-s. (5), *ante*).

*Sub-s. (3).*—In connection with this subsection, which has been amended only in a minor way, it should be noted that sub-s. (1) refers to land which has been acquired or appropriated and is held for the time being for the purposes of Part IV of the 1947 Act, *ante*. It is this land to which sub-s. (3) refers and which it provides may be appropriated for any purposes for which the authority are or may be authorised in any capacity to acquire land by virtue of or under any enactment other than Part IV of the 1947 Act.

*Local Government Act, 1933.*—For ss. 163 (1), (2) and (3), 164, 165, and 166, see 26 Halsbury's Statutes 396, 397.

*London Government Act, 1939.*—For ss. 106 (1), (2) and (3), 107, 108 and 109, see 32 Halsbury's Statutes 310, 311.

*Lands Clauses Consolidation Act, 1845, s. 68.*—2 Halsbury's Statutes 1134.

*Sub-s. (4).*—This subsection, which is practically unamended, provides that the consent of the Minister shall be requisite to any disposal or appropriation of land under this section. This is but one instance of the power of control which may be exercised by the central authority



over the local planning authority. The contention is that if the Minister is to be responsible to Parliament for planning throughout the country, he must possess this power (cf. ss. 163-165 of the Local Government Act, 1933 (26 Halsbury's Statutes 396 *et seq.*)).

*The Minister.*—The Minister of Town and Country Planning (s. 1 of the 1947 Act, *ante*).

*Exceptional circumstances.*—The Minister will be the sole judge as to whether there are exceptional circumstances.

*Development plan.*—See s. 5 of the 1947 Act, *ante*.

*Area of comprehensive development.*—See s. 5 (3) of the 1947 Act, *ante*.

*Contiguous or adjacent.*—See note to s. 5 of the 1947 Act, *ante*, on this phrase.

*Development.*—This includes re-development (s. 65 (1), *post*).

*Sub-s. (7).*—A person applying to the Minister for a direction under this subsection will have to supply the Minister with material on which he can form his opinion. In all probability, the Minister will endeavour to get the matter settled without the necessity for a formal direction by sending one of his officers to interview the person and the authority. All kinds of difficulties can arise with regard to sub-s. (6), and sub-s. (7) is designed to enable the Minister to overcome these difficulties, in the last resort, by a direction.

*If it appears to the Minister.*—See note to s. 4 of the 1947 Act, *ante*.

*Special needs.*—Compare the Acquisition of Land (Assessment of Compensation) Act, 1919, s. 2, Rule (3) (2 Halsbury's Statutes 1178).

*Acquisition of Land (Assessment of Compensation) Act, 1919.*—2 Halsbury's Statutes 1176.

*Official arbitrator.*—To secure the appointment of an official arbitrator for this purpose, an application should be made in accordance with the form which occurs in the Schedule to the Acquisition of Lands (Assessment of Compensation) Rules, 1919, S. R. & O., 1919, No. 1836/30.

*Features of special architectural or historic interest.*—See ss. 29, 30 and 41 of the 1947 Act, *ante*.

*List compiled or approved.*—See s. 30 of the 1947 Act, *ante*. As to the publication of such lists, see 445 H. of C. Official Report 1497, for a statement by the Minister in reply to a parliamentary question.

*Definitions.*—As to "local authority," "land," "use," "buildings or works," "erection," "enactment," "building," "lease" and "mortgage," see s. 119 (1) of the 1947 Act, *ante*. As to "Gazette and local advertisement," see ss. 65 (1), *post*. For the purposes of sub-s. (8), *ante*, the term "preservation" is defined in that subsection.

**20. Power of local authorities to carry out development of land held by them for purposes of Part IV of the Town and Country Planning Act, 1947.**—(1) The functions of a local authority shall include power for the authority, notwithstanding any limitation imposed by law on the capacity of such a body by virtue of its constitution, to erect, construct or carry out on any such land as is mentioned in subsection (1) of section nineteen of this Act, any building or work not being a building or work for the erection, construction or carrying out of which, whether by them or by any other person, statutory power already exists by virtue of or under an enactment other than Part IV of the Town and Country Planning Act, 1947, or could be conferred under an enactment other than Part IV of the Town and Country Planning Act, 1947.

(2) The consent of the Minister shall be requisite to any exercise by a local authority of the power conferred on them by the preceding subsection, and may be given as respects either a particular operation or operations of any class, and either subject to or free from any conditions or limitations.

(4) Where a local authority propose to carry out any operation which they would have power to carry out by virtue only of subsection (1) of this section, they shall notify the Minister of their proposal, and the Minister may direct such advertisement by the authority as appears to him to be requisite for the purposes of subsection (2) of this section.

(5) The functions of a local authority shall include power for the authority, notwithstanding any such limitation as is mentioned in subsection (1) of this section, to repair, maintain and insure any buildings or works on such land as is mentioned in the said sub-section (1), and generally to deal therewith in a proper course of management.

(6) Subsection (8) of the last preceding section shall apply to the power conferred on a local authority by subsection (1) of this section as it applies to the powers conferred by that section, with the substitution for references to the disposal of land of references to the carrying out of any such operation as is mentioned in subsection (1) of this section.

(7) A local authority may, with the consent of the Minister, enter into arrangements with an authorised association, as defined in section thirty-five of the Town and Country Planning Act, 1932, for the carrying out by the association of any operation which, apart from the arrangements, the local authority would have power under this section to carry out, on such terms (including terms as to the making of payments or loans by the authority to the association) as may be specified in the arrangements:



Provided that nothing in this subsection shall be construed as authorising such an association to carry out any operation which they would not have power to carry out apart from this subsection.

(8) Nothing in this section shall be construed as authorising any act or omission on the part of a local authority which is actionable at the suit of any person on any ground other than such limitation as is mentioned in subsection (1) of this section. [2740]

*General note.*—The powers of the preceding section enable local authorities, with the consent of the Minister, to arrange development of land acquired or appropriated by them under Part IV of the 1947 Act, *ante*, for a wide range of purposes.

The present section enlarges these powers. Sub-s. (1), *ante*, enables them, with the consent of the Minister, to erect, construct or carry out any building or work on the land, for which statutory power has not been conferred by any enactment other than Part IV of the 1947 Act, *ante*.

Sub-s. (3) of the section as originally enacted imposed a restriction on the Minister in giving his consent, but it was so worded that in practice a person who wished to carry out the development himself did not find it easy to prevail over the local authority. The subsection is repealed as from the appointed day by s. 113 of and Part II of Sched. IX to the 1947 Act, *ante*, and accordingly is omitted from the section as it appears *ante*.

As from July 1, 1948, the present section is amended as set out in Sched. VIII to the 1947 Act, *ante* (see also s. 113 thereof, *ante*).

*The Minister.*—The Minister of Town and Country Planning (s. 1 of the 1947 Act, *ante*).

*Authorised association.*—By s. 35 (7) of the Town and Country Planning Act, 1932 (25 Halsbury's Statutes 507), this expression means "any society, company or body of persons approved by the Minister whose objects include the promotion, formation, or management of garden cities and the erection, improvement or management of buildings for the working classes and others, and which does not trade for profit or whose constitution forbids the issue of any share or loan capital with interest or dividend exceeding the rate for the time being fixed by the Treasury."

*Town and Country Planning Act, 1932, s. 35.*—25 Halsbury's Statutes 506.

*Definitions.*—For definitions of "functions," "local authority," "land," "buildings or works," "erection" and "enactment," see s. 119 (1) of the 1947 Act, *ante*.

**22. Authorisation of development on land acquired for purposes of Part IV of the Town and Country Planning Act, 1947, notwithstanding interference with easements, etc.**—(1) The erection, construction or carrying out, or maintenance, of any building or work on land which has been acquired or appropriated by a local authority as mentioned in subsection (1) of section nineteen of this Act, or which has been acquired by the Central Land Board under section forty-three of the Town and Country Planning Act, 1947, whether done by the local authority or by any person deriving title under the local authority or under the Board, as the case may be, shall be deemed to be authorised by this section if it conforms with planning control, notwithstanding that it involves interference with any easement or other servitude or breach of any restriction as to the user of land arising by virtue of any contract, but subject to payment of compensation under section sixty-three or sixty-eight of the Lands Clauses Consolidation Act, 1845, to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections in respect of injurious affection where the compensation is to be estimated in connection with a purchase under that Act or the injury arises from the execution of works on land acquired under that Act:

Provided that nothing in this subsection shall authorise interference with any such right as is mentioned in section twenty-five of this Act.

(2) Any liability of a person deriving title under the local authority by whom the land in question was acquired or appropriated, or under the Central Land Board, to pay such compensation as aforesaid which that person fails to discharge shall be enforceable against that authority or against the Board, as the case may be:

Provided that nothing in this subsection shall be construed as affecting any agreement between the authority or Board and any other person for indemnifying the authority or Board against any liability under this subsection.

(3) For the purposes of subsection (1) of this section, the erection, construction or carrying out, or maintenance, of any building or work shall be treated as conforming with planning control if it is done in accordance with permission granted under Part III of the Town and Country Planning Act, 1947, and not otherwise.

(4) Nothing in this section shall be construed as authorising any Act or omission on the part of a local authority, or of any body corporate, in contravention of any limitation imposed by law on the capacity of such a body by virtue of its constitution, or as authorising any act or omission on the part of any person which is actionable at the suit of any person or any ground other than such interference or breach as is mentioned in subsection (1) of this section.

(5) In this section the expression "servitude" means any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, and includes a natural right to support. [2741]

*General note.*—This section as originally enacted has been substantially amended by s. 113 of and Sched. VIII to the 1947 Act, *ante*.

*Central Land Board.*—For the constitution and functions of the Board, see ss. 2 and 3 of the 1947 Act, *ante*.

*S. 43 of the Town and Country Planning Act, 1947.*—See *ante*. This section provides for the acquisition of land by the Central Land Board.

*Servitude.*—Note that this term, as defined in sub-s. (5), *supra*, includes a natural right to support.

*Lands Clauses Consolidation Act, 1845, ss. 63 and 68.*—2 Halsbury's Statutes 1133, 1134. S. 63 as modified by the 1944 Act and the Acquisition of Land (Assessment of Compensation) Act, 1919 (2 Halsbury's Statutes 1176), provides that in estimating the purchase money or compensation to be paid by the purchasing authority, regard shall be had by the tribunal not only to the value of the land to be purchased or taken by the purchasing authority but also to the damages, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise of the powers of this or the special Act, or any Act incorporated therewith.

S. 68 recognises a claim for compensation for lands injuriously affected by the execution of the works as well as for lands taken.

*S. 25 of this Act.*—See *post*. This section deals with the extinguishment of rights of way and rights as to apparatus of statutory undertakers.

*Permission granted under Part III of the Town and Country Planning Act, 1947.*—See, in particular, ss. 12–14 of the 1947 Act, *ante*.

*Definitions.*—For definitions of "erection," "building or work," "land" and "local authority," see s. 119 (1) of the 1947 Act, *ante*.

**23. Power to extinguish highways over land acquired for purposes of Part IV of the Town and Country Planning Act, 1947.**—(1) The Minister may by order extinguish any public right of way over any such land as is mentioned in sub-section (1) of section nineteen of this Act if he is satisfied that an alternative right of way has been or will be provided or that the provision thereof is not required.

(2) The Sixth Schedule to the Town and Country Planning Act, 1947, shall apply to an order under this section as it applies to an order under section forty-nine of that Act, and the said Schedule shall, in its application to an order under this section, have effect as if for any reference therein to the Minister of Transport there were substituted a reference to the Minister.

(3) The Minister of Transport, or a local highway authority may be authorised to purchase land compulsorily for the purpose of providing any public right of way which is to be provided as an alternative to a right of way extinguished under this section; and the Acquisition of Land (Authorisation Procedure) Act, 1946, shall apply to the compulsory acquisition of land under this subsection and accordingly shall have effect—

(a) as if this subsection had been in force immediately before the commencement of that Act;

(b) as if this subsection were included among the enactments specified in paragraph (b) of subsection (1) of section one of that Act:

Provided that section two of the said Act shall not apply to the compulsory acquisition of land under this subsection.

(4) Where on the application of a local authority an order is made under this section extinguishing a public right of way, and at the time of publication of the notice required by paragraph 1 of the Sixth Schedule to the Town and Country Planning Act, 1947, there was under, in, upon, over, along, or across the land over which the right of way subsisted any telegraphic line belonging to or used by the Postmaster-General,—

(a) the power of the Postmaster-General to remove the line shall be exercisable notwithstanding the making of the order, so however that the said power shall not be exercisable, as respects the whole or any part of the line, after the expiration of a period of three months from the date on which the right of way is extinguished unless before the expiration of that period the Postmaster-General has given notice to the local authority of his intention to remove the line or that part thereof, as the case may be;

(b) the Postmaster-General may by notice to the local authority in that behalf abandon the said line or any part thereof, and shall be deemed, as respects the line or any part thereof, to have abandoned it at the expiration of the said period of three months unless before the expiration of that period he

- (c) the Postmaster-General shall be entitled to recover from the local authority the expense of providing, in substitution for the line and any telegraphic line connected therewith which is rendered useless in consequence of the removal or abandonment of the line, a telegraphic line in such other place as the Postmaster-General may require ;
- (d) where under paragraph (b) of this subsection the Postmaster-General has abandoned the whole or any part of a telegraphic line, it shall vest in the local authority, and the provisions of the Telegraph Acts, 1863 to 1943, shall not apply in relation to the line or part in question as respects anything done or omitted after the abandonment thereof.

In this subsection the expression " telegraphic line " has the same meaning as in the Telegraphic Act, 1878.

(5) Regulations made under the Town and Country Planning Act, 1947, may provide for securing that any proceedings required to be taken for the purposes of an order under this section may be taken concurrently with any proceedings required to be taken for the purposes of the acquisition of the land over which the right of way is to be extinguished, or for securing that any proceedings required to be taken for the purposes of the acquisition of any other land under subsection (3) of this section may be taken concurrently with either or both of the said proceedings. [2742]

*General note.*—There is clear precedent for this provision. Under the 1932 Act a scheme might contain provisions for the stopping up or diversion of a highway : see s. 11, and Sched. II thereto (25 Halsbury's Statutes 484, 528). Persons aggrieved by a proposed order to extinguish a public right of way have an opportunity of objecting under Sched. VI to the 1947 Act, *ante*, but the objection will be to the Minister of Town and Country Planning and not to the Minister of Transport as set out in that Schedule. Except in special circumstances, if objections are lodged a public inquiry will be held.

For the extensive amendments to this section, see s. 113 of and Sched. VIII to the 1947 Act, *ante*. In particular, the whole of sub-ss. (2) and (3), *ante*, are new.

Compare with these provisions the provisions of s. 49 of the 1947 Act, *ante*.

Note the powers of the Minister as to the extinction of non-vehicular ways under s. 3 of the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Halsbury's Statutes 58).

*The Minister.*—The Minister of Town and Country Planning (s. 1 of the 1947 Act, *ante*).

*If he is satisfied.*—See note to s. 4 of the 1947 Act, *ante*, on the phrase " If it appears to the Minister."

*Sched. VI to the Act of 1947.*—This Schedule lays down the procedure for making orders under s. 49 of the 1947 Act, *ante*, which empowers the Minister of Transport to authorise the stopping up or diversion of any highway.

*Acquisition of Land (Authorisation Procedure) Act, 1946.*—39 Halsbury's Statutes 523. For ss. 1 (1) (b) and 2 thereof, see 39 Halsbury's Statutes 55, 56.

*Commencement of that Act.*—The date of commencement of the Acquisition of Land (Authorisation Procedure) Act, 1946, *supra*, was April 18, 1946.

*Telegraphic line.*—By sub-s. (4), *ante*, this expression has the same meaning as in the Telegraph Act, 1878 ; see s. 2 thereof (19 Halsbury's Statutes 261).

*Telegraph Acts, 1863 to 1943.*—These include the Telegraph Acts, 1863 to 1925 (19 Halsbury's Statutes 210-316), the Post Office and Telegraph Act, 1940 (33 Halsbury's Statutes 351), and the Telegraph Act, 1943 (36 Halsbury's Statutes 307).

*Regulations.*—For the general provisions of the 1947 Act as to regulations, see s. 111 thereof, *ante*.

*Definitions.*—For definitions of " land " and " local highway authority," see s. 119 (1) of the 1947 Act, *ante*.

**24. Extinguishment of private ways, and rights as to apparatus, over or in land purchased for purposes of Part IV of the Town and Country Planning Act, 1947.**—(1) Upon the completion by the purchasing authority of a compulsory purchase under Part IV of the Town and Country Planning Act, 1947, of any land, all private rights of way and rights of laying down, erecting, continuing or maintaining any apparatus on under or over the land shall be extinguished and any such apparatus shall vest in the purchasing authority :

Provided that this section shall not apply to any right vested in, or any apparatus belonging to, the person carrying on a statutory undertaking for the purpose of the carrying on thereof, and shall have effect as respects other matters subject to any direction given by the purchasing authority before the completion of the purchase that this section shall not apply to any right or apparatus specified in the direction and subject to any agreement which may be made (whether before or after the completion of the purchase) between the purchasing authority and the person in or to whom the right or apparatus in question is vested or belongs.

(2) Any person who suffers loss by the extinguishment of any right or the vesting

of any apparatus under this section shall be entitled to be paid by the purchasing authority compensation, to be determined under and in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919.

(3) Expenses incurred by a Minister or the Central Land Board in the payment of compensation under the last preceding subsection shall be defrayed out of moneys provided by Parliament. [2743]

*General note.*—This section as originally enacted has been amended in a minor way by s. 113 of and Sched. VIII to the 1947 Act, *ante*, but the substance remains the same. Part of the original sub-s. (2) has been repealed as from August 6, 1947, the date of passing of the 1947 Act, by ss. 113 and 120 of and Sched. IX, Part I, to that Act, *ante*.

Compare generally the provisions of the section with those of the Housing Act, 1936, s. 46 (3) (29 Halsbury's Statutes 602). For the long legislative history of the section, see note to s. 46 of the Housing Act, 1936, in Lumley's Public Health, Eleventh Edition, Vol. II, at p. 1656. Note the omission of the words "and all other rights or easements" which occur in the Housing Act, 1936, s. 46 (3). The reason for this omission is that other rights and easements are dealt with in s. 22 of the 1944 Act, *ante*.

*Completion.*—As to expedited completion, see Sched. VI to the 1944 Act, *post*.

*Compulsory purchase.*—Note that the provisions of this section apply only to compulsory purchase, though the matters herein dealt with should receive consideration when a purchase is effected by agreement.

*Proviso for protection of statutory undertakers.*—See, further, s. 25 of the 1944 Act, *infra*.

*Sub-s. (2).*—This subsection provides for compensation for the loss which any person will suffer by the extinguishment of any right or the vesting of any apparatus under this section.

*Acquisition of Land (Assessment of Compensation) Act, 1919.*—2 Halsbury's Statutes 1176 *et seq*.

*Central Land Board.*—The reference to this Board in sub-s. (3), *supra*, is new, the Board being established by s. 2 of the 1947 Act, *ante*.

*Definitions.*—As to "purchasing authority," see s. 65 (1) of the 1944 Act, *post*. For definitions of "erect," "land," "statutory undertaking" and "a Minister," see s. 119 (1) of the 1947 Act, *ante*.

**25. Extinguishment of rights of way, and rights as to apparatus, of statutory undertakers.**—(1) Where there subsists over land which has been acquired by a purchasing authority under Part IV of the Town and Country Planning Act, 1947, or which has been appropriated by a local authority as mentioned in subsection (1) of section nineteen of this Act, any right of way or any right of laying down, erecting, continuing or maintaining any apparatus on under or over the land, or there is on under or over any such land any apparatus, vested in or belonging to the person carrying on a statutory undertaking for the purpose of the carrying on thereof, the purchasing or appropriating authority may serve on the said person a notice that at the expiration of such period as may be specified in the notice the right will be extinguished, or requiring that before the expiration of such period as may be so specified the apparatus shall be removed.

(2) A person on whom a notice is served under the preceding subsection may before the expiration of twenty-eight days from the service of the notice serve a counter-notice on the purchasing or appropriating authority stating that he objects to all or any of the provisions of the notice and specifying the grounds of his objection.

(3) If no counter-notice is served under the last preceding subsection, any right to which the notice relates shall be extinguished at the end of the period specified in that behalf in the notice, and if at the end of the period so specified in relation to any apparatus any requirement of the notice as to the removal of the apparatus has not been complied with, the purchasing or appropriating authority may remove the apparatus and dispose thereof in any way they or he may think fit.

(4) If a counter-notice is served under subsection (2) of this section on a local authority or on statutory undertakers, the authority or undertakers may either withdraw the notice (without prejudice, however, to the service of a further notice) or apply to the Minister and the appropriate Minister for an order embodying, either with or without modification, the provisions of the notice, and the Minister and the appropriate Minister may if they think fit, after affording to the person carrying on the undertaking on whom the notice was served under subsection (1) of this section an opportunity of objecting to the application and, if any objection is made, after considering the objection and affording to the said person and to the authority or undertakers on whom the counter-notice was served an opportunity of appearing before and being heard by a person appointed by the Minister and the appropriate Minister for the purpose, make an order in accordance with the application, either with or without modification.

prejudice, however, to the service of a further notice) or he or they and the appropriate Minister may make an order embodying, either with or without modification, the provisions of the notice.

Where a Minister and the appropriate Minister, or the Central Land Board and the appropriate Minister, propose to make an order under this subsection, they shall prepare a draft of the order and shall afford to the person carrying on the undertaking an opportunity of objecting to the proposal and, if any objection is made, shall consider the objection and afford to the said person an opportunity of appearing before and being heard by a person appointed by them for the purpose, and may then make an order in accordance with the draft, either with or without modification.

(6) Subsection (3) of this section shall apply to an order made under either of the two last preceding subsections as it applies to a notice in respect of which no counter-notice is served, but with the substitution for references to a notice of references to an order.

(7) Where an objection to an order under subsection (4) or (5) of this section is duly made and is not withdrawn before the making of the order, the order shall be subject to special parliamentary procedure.

(8) In respect of the extinguishment of any right, or the imposition of any requirement, under this section the person carrying on a statutory undertaking shall be entitled to recover from the purchasing or appropriating authority at whose instance the right was extinguished or the requirement was imposed compensation in accordance with Part I of the Fourth Schedule to this Act.

(9) Expenses incurred by a Minister or the Central Land Board in the payment of compensation under the last preceding subsection shall be defrayed out of moneys provided by Parliament. [2744]

*General note.*—This section as originally enacted has been subjected to numerous minor amendments, principally of terminology, by s. 113 of and Sched. VIII to the 1947 Act, *ante*.

*Note, in particular, the provisions of sub-ss. (2) and (3), ante, whereby, if the counter-notice is not served before the expiration of twenty-eight days, the notice extinguishing the right or requiring the apparatus to be removed will become effective; there is no power on the part of the Minister to extend the time.*

*May serve . . . a notice.*—As to service of notices, see s. 105 of the 1947 Act, *ante*.

*The Minister.*—The Minister of Town and Country Planning (s. 1 of the 1947 Act, *ante*).

*The appropriate Minister; a Minister.*—As to the first term, see s. 65 (1) of the 1944 Act, *post*, and s. 119 (1) of the 1947 Act, *ante*; and as to the second term, see the said s. 119 (1). Each expression should be distinguished from "the Minister," *supra*.

*An opportunity . . . of being heard.*—In the past this has taken the form of a local inquiry (see s. 104 of the 1947 Act, and the notes thereto), and there is no reason to believe that on the present continuation of the provisions the current practice will be altered.

*Central Land Board.*—For the establishment and functions of the Board, see ss. 2 and 3 of the 1947 Act, *ante*.

*Special parliamentary procedure.*—This means the procedure set out in the Statutory Orders (Special Procedure) Act, 1945 (38 Halsbury's Statutes 439).

*Definitions.*—As to "purchasing authority," see s. 65 (1) of the 1944 Act, *post*. For definitions of "land," "local authority," "erect," "statutory undertaking" and "statutory undertakers," see s. 119 (1) of the 1947 Act, *ante*. "Statutory undertaking" is also referred to in s. 65 (1) of the 1944 Act, *post*.

## 26. Extension and modification of powers and duties of statutory undertakers.—

(1) Where it appears to the Minister and the appropriate Minister, on a representation made by the person carrying on a statutory undertaking, that—

- (a) in order to secure the provision of services which would not otherwise be provided, or satisfactorily provided, for any purpose in connection with which a local authority or Minister may be authorised under Part IV of the Town and Country Planning Act, 1947, to acquire land, or
- (b) in order to facilitate any adjustment of the carrying on of the undertaking necessitated by the acquisition under Part IV of the Town and Country Planning Act, 1947, of any land an interest in which was held, or which was used, for the purpose of the carrying on of the undertaking, or necessitated by the extinguishment of any right, or the imposition of any requirement, under the last preceding section, or necessitated by a decision on an application made under Part III of the Town and Country Planning Act, 1947, by a person carrying on the undertaking for permission to develop any such land or by the revocation or modification of permission granted on such an application or by the making of an order under section twenty-six of that Act in relation to any such land,

it is expedient that the powers and duties of the said person in relation to the carrying on of the undertaking should be extended or modified, the Minister and the appropriate Minister may by order provide for such extension or modification of the said powers and duties as appears to them to be requisite in order to secure the provision of services as mentioned in paragraph (a) of this subsection, or to facilitate the adjustment of the undertaking as mentioned in paragraph (b) of this subsection, as the case may be.

(2) Without prejudice to the generality of the provisions of the preceding subsection, an order under the preceding subsection may provide—

- (a) for empowering the person carrying on the undertaking to acquire, whether compulsorily or by agreement, any land specified in the order and to erect or construct any buildings or works so specified ;
- (b) for applying in relation to the acquisition of such land and the construction of such works enactments relating to the acquisition of land and the construction of works ;
- (c) for giving effect, where it has been represented that the making of the order is expedient for the purposes of paragraph (a) of the preceding subsection, to such financial arrangements between the local authority or Minister and the person carrying on the undertaking as they may agree or, in default of agreement, as may be determined to be equitable in such manner and by such tribunal as may be specified in the order ;

and for such incidental and supplemental matters as appear to the Minister and the appropriate Minister to be expedient for the purposes of the order.

(3) As soon as may be after making a representation under subsection (1) of this section, the person carrying on the undertaking in question shall publish, in such form and manner as may be directed by the Minister and the appropriate Minister, a notice giving such particulars as may be so directed of the matters to which the representation relates and specifying the time within which, and the manner in which, objections to the making of an order on the representation may be made, and shall also, if it is so directed by the Minister and the appropriate Minister, serve a like notice on such persons, or persons of such classes, as may be so directed.

(4) The provisions of the First Schedule to this Act shall have effect in relation to the making of an order on the representation if any objection thereto is duly made, and, subject to those provisions in a case in which they have effect, the Minister and the appropriate Minister may, if they think fit, make an order.

(5) A local authority or Minister may represent to the Minister and the appropriate Minister that the making of an order under subsection (1) of this section as respects any statutory undertaking is expedient for the purpose of securing the provision of new services, or the extension of existing services, for any purpose in connection with which the local authority or Minister may be authorised under Part IV of the Town and Country Planning Act, 1947, to acquire land, and where such a representation is made the preceding provisions of this section shall have effect as if the representation had been made by the person carrying on the undertaking in question, but with the substitution in subsection (3) for the reference to the person carrying on the undertaking of a reference to the local authority or Minister.

(6) An order under this section shall be subject to special parliamentary procedure. [2745]

*General note.*—This section as originally enacted has been amended by s. 113 of and Sched. VIII to the 1947 Act, *ante*. In addition, part of the original sub-s. (2) (b) has been repealed as from August 6, 1947, the date of the passing of the 1947 Act, by ss. 113 and 120 of and Sched. IX, Part I, to that Act, *ante*.

The effect of the section is to empower the Minister and the appropriate Minister (see *infra*), to make a provisional order (which is to be of no effect until confirmed by Parliament) providing for the extension or modification of the powers and duties of statutory undertakers and, among other things, to empower statutory undertakers to acquire land, whether by agreement or compulsorily, in order to construct buildings and works. The purposes for which an order could be made under this section are stated in paras. (a) and (b) of sub-s. (1), *ante*. The form of sub-s. (1) (b) has undergone change by reason of the provisions of the 1947 Act (see *ante*).

*Where it appears, etc. ; if they think fit ; as appears to the Minister, etc.*—As to all these phrases, see the note to s. 4 of the 1947 Act, *ante*, on the phrase “ If it appears to the Minister.”

*The Minister.*—The Minister of Town and Country Planning (s. 1 of the 1947 Act, *ante*).

*Serve a like notice.*—As to service of notices, see s. 105 of the 1947 Act, *ante*.



*Special parliamentary procedure.*—See the Statutory Orders (Special Procedure) Act, 1945 (38 Halsbury's Statutes 439).

*Definitions.*—As to "appropriate Minister" and "statutory undertaking," see ss. 65 (1) of the 1944 Act, *post*, and s. 119 (1) of the 1947 Act, *ante*; as to "develop" see s. 65 (1) of the 1944 Act, *post*, and ss. 12 and 119 (1) of the 1947 Act, *ante*. For definitions of "land," "local authority," "buildings or works" and "enactment," see s. 119 (1) of the 1947 Act, *ante*.

**27. Relief of statutory undertakers from obligations rendered impracticable by exercise of powers of the Town and Country Planning Act, 1947.**—(1) Where on a representation in that behalf made by the person carrying on a statutory undertaking the appropriate Minister is satisfied that—

- (a) the compulsory purchase under Part IV of the Town and Country Planning Act, 1947, of any land an interest in which was held, or which was used, for the purpose of the carrying on of the undertaking;
- (b) a decision on an application under Part III of the said Act by a person carrying on the undertaking for permission to develop any such land, or the revocation or modification of permission granted on such an application, or the making of an order under section twenty-six of that Act in relation to any such land; or
- (c) the extinguishment under Part IV of that Act of any right, or the imposition of any requirement as to the removal of apparatus, vested in or belonging to the said person.

has rendered impracticable the fulfilment of any obligation of the said person incurred in connection with the carrying on of the undertaking, the appropriate Minister may by order direct that the said person shall be relieved of the fulfilment of the obligation either absolutely or to such extent as may be specified in the order.

(2) As soon as may be after making a representation to the appropriate Minister under the preceding subsection, the person carrying on the undertaking in question shall, as may be directed by the appropriate Minister, either publish, in such form and manner as may be so directed, a notice giving such particulars as may be so directed of the matters to which the representation relates and specifying the time within which, and the manner in which, objections to the making of an order on the representation may be made, or serve such a notice on such persons, or persons of such classes, as may be so directed, or both publish and serve such notices.

(3) The provisions of the First Schedule to this Act shall have effect in relation to the making of an order on the representation if any objection thereto is duly made, and, subject to those provisions in a case in which they have effect, the appropriate Minister may, if he thinks fit, make an order.

(4) If any objection to the making of an order under this section is made and is not withdrawn before the making of the order, the order shall be subject to special parliamentary procedure.

(5) In relation to an order made under this section subsections (1) to (3) of section eleven of the Town and Country Planning Act, 1947, shall apply, subject to any necessary modifications, as they apply in relation to a development plan approved by the Minister under that Act, and accordingly the said subsection (1) shall have effect as if for the reference therein to the local planning authority there were substituted a reference to the appropriate Minister:

Provided that where any such order is subject to special parliamentary procedure, then—

- (a) if the order is confirmed by Parliament under section six of the Statutory Orders (Special Procedure) Act, 1945, subsections (2) and (3) of the said section eleven shall not apply;
- (b) in any other case those subsections shall have effect in relation to the order as if in subsection (2) for the reference to the date on which the notice required by subsection (1) of the said section eleven is first published there were substituted a reference to the date on which the order becomes operative under section six of the Statutory Orders (Special Procedure) Act, 1945, and as if in subsection (3) the words from "and shall become operative" to the end of the subsection were omitted. [2746]

*General note.*—Lengthy amendments to this section as originally enacted have been effected by s. 113 of and Sched. VIII to the 1947 Act, *ante*.

By this section statutory undertakers may be relieved, by orders made by the "appropriate Minister," from obligations rendered impracticable by the exercise of three types of power under the 1947 Act. Provision is made for the entering of objections to representations



made by statutory undertakers with a view to the Minister's exercising his powers in that respect and special parliamentary procedure may become applicable. Parts of s. 11 of the 1947 Act, *ante*, are applied, with modifications, to orders under the present section.

*Where the appropriate Minister is satisfied; if he thinks fit.*—See note to s. 4 of the 1947 Act, *ante*, on the phrase "If it appears to the Minister." Note that representation must first be made before the Minister can be "satisfied."

*Has rendered impracticable.*—Note that complete impossibility of fulfilment need not be shown. "A thing is impracticable when it can only be done at an excessive or unreasonable cost." (*Moss v. Smith* (1850), 9 C. B. 94, *per* MAULE, J., at p. 103.)

*By order direct.*—For the general provisions as to orders, see s. 111 of the 1947 Act, *ante*.

*Serve such a notice.*—For the general provisions as to service of notices, see s. 105 of the 1947 Act, *ante*.

*Special parliamentary procedure.*—This means the procedure set out in the Statutory Orders (Special Procedure) Act, 1945 (38 Halsbury's Statutes 439).

*The Minister.*—The Minister of Town and Country Planning (s. 1 of the 1947 Act, *ante*).

*Statutory Orders (Special Procedure) Act, 1945, s. 6.*—38 Halsbury's Statutes 444.

*Definitions.*—As to "statutory undertaking" and "appropriate Minister," see s. 65 (1) of the 1944 Act, *post*, and s. 119 (1) of the 1947 Act, *ante*; as to "develop," see s. 65 (1) of the 1944 Act, *post*, and ss. 12 and 119 (1) of the 1947 Act, *ante*; as to "development plan," see ss. 5 and 119 (1) of the 1947 Act, *ante*; and as to "local planning authority," see ss. 4 and 119 (1) of the 1947 Act, *ante*. For definition of "land," see s. 119 (1) of the 1947 Act, *ante*.

**28. Authorisation of use and development of consecrated land, and burial grounds, notwithstanding restrictions.**—(1) Any consecrated land, whether or not including any building, which has been acquired by a purchasing authority under Part IV of the Town and Country Planning Act, 1947, or which has been appropriated by a local authority as mentioned in subsection (1) of section nineteen of this Act, may, subject to the provisions of this section, be used in any manner, whether or not involving the erection, construction or carrying out, or maintenance, of any building or work,—

- (a) in the case of land acquired by a purchasing authority other than a Minister, or of land appropriated by a local authority as aforesaid, by that authority or by any other person, if that use conforms with planning control, or
- (b) in the case of land acquired by a Minister, by him or on his behalf for any purpose for which he acquired the land.

notwithstanding any obligation or restriction imposed under ecclesiastical law or otherwise as respects such land :

Provided that the provisions of subsection (4) of this section shall have effect to the exclusion of the provisions of this subsection as respects consecrated land being or forming part of a burial ground.

(2) Any use of consecrated land authorised by the preceding subsection, and the use of any land, not being consecrated land, acquired or appropriated as therein mentioned which at the time of acquisition or appropriation included any church or other building used or formerly used for religious worship or the site thereof, shall be subject to compliance with the prescribed requirements with respect to the removal and reinterment of any human remains and the disposal of monuments or other memorials and of fixtures and furnishings, and, in the case of consecrated land, subject to such provisions as may be prescribed for prohibiting or restricting the use of the land, either absolutely or until the prescribed consent has been obtained, so long as any church or other building used or formerly used for religious worship or any part thereof, remains on the land.

(3) Any regulations made for the purposes of the last preceding subsection—

- (a) shall contain such provisions as appear to the Minister to be requisite for securing that any use of land which is subject to compliance with the regulations shall, as nearly as may be, be subject to the like control as is imposed by law in the case of a similar use authorised by an enactment other than this Act or by a Measure or as it would be proper to impose on a disposal of the land in question otherwise than in pursuance of an enactment or Measure ;
- (b) shall contain requirements relating to the disposal of any such land as is mentioned in the last preceding subsection such as appear to the Minister requisite for securing that the provisions of that subsection shall be complied with in relation to the use of the land ; and
- (c) may contain such incidental and consequential provisions (including provisions as to the closing of registers) as appear to the Minister to be expedient for the purposes of the regulations.

(4) Any land consisting of a burial ground or part of a burial ground which has been acquired by a purchasing authority under Part IV of the Town and Country Planning Act, 1947, or which has been appropriated by a local authority as mentioned in subsection (1) of section nineteen of this Act, may be used in any manner, whether or not involving the erection, construction or carrying out, or maintenance, of any building or work,—

- (a) in the case of land acquired by a purchasing authority other than a Minister, or of land appropriated by a local authority as aforesaid, by that authority or by any other person, if that use conforms with planning control, or
- (b) in the case of land acquired by a Minister, by him or on his behalf for any purpose for which he acquired the land,

notwithstanding anything in any enactment relating to burial grounds or any obligation or restriction imposed under ecclesiastical law or otherwise as respects burial grounds :

Provided that this subsection shall not have effect as respects any such land which has been used for the burial of the dead until the prescribed requirements with respect to the removal and reinterment of human remains, and the disposal of monuments, tombstones or other memorials, in or upon the land have been complied with.

(5) Provision shall be made by any regulations made for the purposes of subsection (2) of this section and the proviso to the last preceding subsection—

- (a) for requiring the persons in whom the land is vested to publish notice of their intention to carry out the removal and reinterment of any human remains or the disposal of any tombstones, monuments or other memorials ;
- (b) for enabling the personal representatives or relatives of any deceased person themselves to undertake the removal and reinterment of the remains of the deceased, and the disposal of any tombstone, monument or other memorial commemorating the deceased, and for requiring the persons in whom the land is vested to defray the expenses of such removal, reinterment and disposal, not exceeding such amount as may be prescribed ;
- (c) for requiring compliance with such reasonable conditions, if any, as may be imposed, in the case of consecrated ground, by the Bishop of the diocese, with respect to the manner of removal, and the place and manner of reinterment of any human remains, and the disposal of any tombstones, monuments or other memorials, and with any directions given in any case by the Secretary of State with respect to the removal and reinterment of any human remains.

Any expenses incurred by a government department or the Central Land Board under paragraph (b) of this subsection shall be defrayed out of moneys provided by Parliament.

(6) Subject to the provisions of any such regulations as aforesaid, no faculty shall be required for the removal and reinterment in accordance with the regulations of any human remains, or for the removal and disposal of any tombstones, monuments or other memorials, and the provisions of section twenty-five of the Burial Act, 1857 (which prohibits the removal of human remains without a licence of the Secretary of State except in certain cases) shall not apply to a removal carried out in accordance with the regulations.

(7) In this section—

- (a) the expression “ burial ground ” includes any churchyard, cemetery or other ground, whether consecrated or not, which has at any time been set apart for the purpose of interment ;
- (b) references to conformity with planning control shall be construed in accordance with subsection (3) of section twenty-two of this Act, with the substitution for references therein to anything done as therein mentioned of references to any use of land, whether or not involving the doing of any such thing.

(8) Nothing in this section shall be construed as authorising any act or omission on the part of a local authority, or of any body corporate, in contravention of any limitation imposed by law on the capacity of such a body by virtue of its constitution, or as authorising any act or omission on the part of any person that is actionable at the suit of any person on any ground other than contravention of any such

obligation, restriction or enactment as is mentioned in subsection (1) or (4) of this section. [2747]

*General note.*—This section as originally enacted has been amended to bring it into line with the general tenor of the 1947 Act by s. 113 of and Sched. VIII to the 1947 Act, *ante*.

The section authorises the use and development in accordance with planning control of consecrated land acquired or appropriated under the 1947 or 1944 Act respectively, subject to safeguards, particularly in the case of church buildings or sites.

*Consecrated land.*—Subject to statutory modifications, land which has been dedicated *in sacros usus* retains the ecclesiastical character bestowed on it by the act of consecration, whoever may be the actual owner. An act or sentence of consecration signed by a bishop constitutes the legal act of consecration.

*Planning control.*—As to this term, note the provisions of sub-s. (7) (b), *ante*.

*Ecclesiastical law.*—This phrase may in England be construed either as confined to the law of the Church of England as administered by the ecclesiastical courts, or in a wider sense as including within its scope all laws relating to a church or *ecclesia* as such, whether derived from the law of the State, the laws of nature and of right reason, the divine law, or the laws of independent societies (Hooker's Ecclesiastical Polity, Book I, section 16). Modern tendencies favour the latter (see generally 11 Halsbury's Laws (2nd Edn.) 405 *et seq.*).

*Any church or other building.*—When the fabric of a church of the Church of England has become devoted *in sacros usus* it cannot, apart from express statutory authority, ever be used as a habitation for man, nor has a judge any power to sanction its use for secular purposes and no alteration or addition can be made to it without a faculty (see 11 Halsbury's Laws (2nd Edn.) 863 *et seq.*).

*Used for religious worship.*—This wording is a good deal wider than references to the Established Church.

*Compliance with the prescribed requirements.*—*I.e.*, compliance with the requirements of regulations of the Minister of Town and Country Planning under the 1944 Act (see s. 63 (1) thereof, *post*).

*As appear to the Minister to be requisite.*—See note to s. 4 of the 1947 Act, *ante*, on the phrase "If it appears to the Minister."

*By a Measure.*—The Church of England Assembly (Powers) Act, 1919 (6 Halsbury's Statutes 55), conferred legislative powers upon the National Assembly of the Church of England (the Church Assembly) in regard to Church of England matters. On a resolution being passed by each House of Parliament directing that a Measure in the form laid before Parliament should be presented to the King, such Measure is presented to the King, and, on receiving the Royal Assent, has the force and effect of an Act of Parliament (s. 4 of the 1919 Act, *supra*; 6 Halsbury's Statutes 58).

*Burial ground.*—Note the wide definition in sub-s. (7), *ante*.

*Central Land Board.*—As to the establishment and functions of the Board, see ss. 2 and 3 of the 1947 Act, *ante*.

*Burial Act, 1857, s. 25.*—2 Halsbury's Statutes 236. This section, which deals with the removal of bodies, enacts as follows:—

"Except in the cases where a body is removed from one consecrated place of burial to another by faculty granted by the ordinary for that purpose, it shall not be lawful to remove any body, or the remains of any body, which may have been interred in any place of burial, without licence under the hand of one of Her Majesty's Principal Secretaries of State, and with such precautions as such Secretary of State may prescribe as the condition of such licence; and any person who shall remove any such body or remains, contrary to this enactment, or who shall neglect to observe the precautions prescribed as the condition of the licence for removal, shall, on summary conviction before any two justices of the peace, forfeit and pay for every such offence a sum not exceeding ten pounds."

In practice, the power of consenting to exhumation is exercised by the Home Secretary. As to the unauthorised removal of a body even from unconsecrated ground, see *R. v. Sharpe* (1857), Dears. & B. 160.

If a removal is carried out in accordance with regulations under the present section, no faculty or licence is required under the said s. 25, *supra*.

*Sub-s. (8).*—The provisions of this subsection can usefully be compared with the somewhat similar provisions appearing, *inter alia*, in s. 2 (4) of the New Towns Act, 1946 (39 Halsbury's Statutes 665), and s. 2 (8) of the Transport Act, 1947 (10 & 11 Geo. 6. c. 49). See also the similar provisions of s. 29 (3) of the 1944 Act, *post*.

*Definitions.*—As to "purchasing authority," see s. 65 (1) of the 1944 Act, *post*. For definitions of "erection," "building or work," "a Minister," "land," "local authority," "use," "enactment" and "government department," see s. 119 (1) of the 1947 Act, *ante*.

**29. Authorisation of use and development of open spaces, etc., notwithstanding restrictions.**—(1) Any land being, or forming part of, a common, open space or fuel or field garden allotment, which has been acquired by a purchasing authority under Part IV of the Town and Country Planning Act, 1947, or which has been appropriated by a local authority as mentioned in subsection (1) of section nineteen of this Act, may be used in any manner, whether or not involving the erection, construction or carrying out, or maintenance, of any building or work,—

(a) in the case of land acquired by a purchasing authority other than a Minister, or of land appropriated by a local authority as aforesaid, by that authority or by any other person, if that use conforms with planning control, or,

(b) in the case of land acquired by a Minister, by him or on his behalf for any purpose for which he acquired the land, notwithstanding anything in any enactment relating to land of that kind, including any enactment, whether public general or local or private, by which any such land is specially regulated.

(2) In this section—

- (a) the expressions “common”, “open space” and “fuel or field garden allotment” have the same meanings as in the Acquisition of Land (Authorisation Procedure) Act, 1946;
- (b) the reference to conformity with planning control shall be construed in accordance with subsection (3) of section twenty-two of this Act, with the substitution for references therein to anything done as therein mentioned of references to any use of land, whether or not involving the doing of any such thing.

(3) Nothing in this section shall be construed as authorising any act or omission on the part of a local authority, or of any body corporate, in contravention of any limitation imposed by law on the capacity of such a body by virtue of its constitution, or as authorising any act or omission on the part of any person that is actionable at the suit of any person on any ground other than contravention of any such enactment as is mentioned in subsection (1) of this section. [2748]

*General note.*—This section as originally enacted is amended by s. 113 of and Sched. VIII to the 1947 Act, *ante*. Its provisions remove any doubt which might otherwise have existed as to whether land which formed part of a common or open space, etc., acquired or appropriated for planning purposes could be used freely in connection with planning development. It is obviously essential that land of this kind should be capable of being used in that connection, notwithstanding subsisting statutory restrictions, once its acquisition or appropriation has been approved.

*Common, open space or fuel or field garden allotment.*—By s. 8 (1) of the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Halsbury's Statutes 61), these terms are defined as follows:—

“ ‘Common’ includes any land subject to be enclosed under the Inclosure Acts, 1845 to 1882, and any town or village green;

“ ‘Fuel or field garden allotment’ means any allotment set out as a fuel allotment, or a field garden allotment, under an Inclosure Act; . . .

“ ‘Open space’ means any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground; . . .”

*Planning control.*—As to this expression, note the provisions of sub-s. (2) (b), *supra*.

*Acquisition of Land (Authorisation Procedure) Act, 1946.*—39 Halsbury's Statutes 52 *et seq.*

*Sub-s. (3).*—Note that this subsection, apart from its application, is identical with sub-s. 28 (8) of the 1944 Act, *ante*; see also the notes to that section.

*Definitions.*—As to “purchasing authority,” see s. 65 (1) of the 1944 Act, *post*. For definitions of “land,” “local authority,” “erection,” “building or work,” “a Minister,” “use” and “enactment,” see s. 119 (1) of the 1947 Act, *ante*.

**30. Provisions as to displacements from land acquired for purposes of Part IV of the Town and Country Planning Act, 1947.**—(1) Where the carrying out of redevelopment on any such land as is mentioned in subsection (1) of section nineteen of this Act will involve the displacement of persons residing in premises thereon, it shall be the duty of the authority, in so far as there is not other residential accommodation suitable to the reasonable requirements of those persons available on reasonable terms, to secure the provision of such accommodation in advance of the displacements from time to time becoming necessary as the redevelopment proceeds.

(2) Section one hundred and thirty-seven of the Housing Act, 1936 (which imposes obligations as to the provision of housing accommodation where land is acquired under statutory powers) shall not have effect in relation to an acquisition by a local authority under section thirty-eight of the Town and Country Planning Act, 1947.

(3) If the Minister certifies that possession of any house which has been acquired or appropriated and is for the time being held by a local authority as is mentioned in subsection (1) of section nineteen of this Act, is immediately required for the purposes for which it was acquired or appropriated, nothing in the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939, shall be deemed to prevent the acquiring or appropriating authority from obtaining possession of the house.

(4) Where possession of any building, or any part of a building, on land which has been acquired or appropriated by a local authority as mentioned in subsection

(1) of section nineteen of this Act or which has been acquired by the Central Land Board or a Minister under Part IV of the Town and Country Planning Act, 1947, is required by them or him for the purposes for which it was acquired or appropriated, then, whatever may be the value or rent of the building or part of a building, they or he may obtain possession thereof under the Small Tenements Recovery Act, 1838, as in the cases therein provided for, at any time after the tenancy of the occupier has expired or has been determined.

(5) A local authority, the Central Land Board or a Minister may pay to any person who is displaced in the carrying out of redevelopment on land which has been acquired by the local authority, Board or Minister under Part IV of the Town and Country Planning Act, 1947, or which has been appropriated by the local authority as mentioned in subsection (1) of section nineteen of this Act, such reasonable allowance as they think fit towards his expenses in removing, and to a person carrying on any business in a building from which he is so displaced they may pay also such reasonable allowance as they think fit towards the loss which, in their opinion, he will sustain by reason of the disturbance to his business consequent on his having to quit the building, and in estimating that loss they shall have regard to the period for which the premises occupied by him might reasonably have been expected to be available for the purpose of his business and the availability of other premises suitable for that purpose. [2749]

*General note.*—This section as originally enacted is here reprinted as amended by s. 113 of and Sched. VIII to the 1947 Act, *ante*.

For legislative precedents see:—

As to sub-s. (1), *ante*, Housing Act, 1936, s. 45 (29 Halsbury's Statutes 601).

As to sub-s. (3), *ante*, Housing Act, 1936, s. 156 (1) (29 Halsbury's Statutes 667).

As to sub-s. (4), *ante*, Housing Act, 1936, s. 156 (2) (29 Halsbury's Statutes 668).

As to sub-s. (5), *supra*, Housing Act, 1936, ss. 18 and 44 (29 Halsbury's Statutes 580, 600).

Sub-s. (1) imposes a duty on local authorities to provide residential accommodation for persons who will be displaced, in so far as there is not other suitable residential accommodation available, while by sub-s. (2) the operation of s. 137 of the Housing Act, 1936 (29 Halsbury's Statutes 660), is negatived.

Next, sub-s. (3) enables authorities to get possession of dwelling-houses, notwithstanding the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939 (see *infra*).

Sub-s. (4) enables possession of any building or part of a building to be obtained by proceedings under the Small Tenements Recovery Act, 1838 (10 Halsbury's Statutes 324).

Finally, sub-s. (5) authorises the payment of allowances towards (1) removal expenses and (2) trade disturbance, in cases where compensation under these heads cannot be claimed under the Lands Clauses Acts (2 Halsbury's Statutes 1113 *et seq.*) as of right.

*It shall be the duty.*—Unlike s. 45 of the Housing Act, 1936 (29 Halsbury's Statutes 601), the duty in this case is imposed in clear terms. There seems to be no reason why this duty should not be enforceable by mandamus, but the practical course which might be taken by displaced persons who alleged that the duty had not been or was not being carried out would be to complain to the Minister.

*Other residential accommodation, etc.*—As originally enacted there was no provision in sub-s. (1) of the present section requiring the accommodation to be suitable. This omission has now been made good by the addition of the words "suitable to the reasonable requirements of those persons" (see s. 113 of and Sched. VIII to the 1947 Act, *ante*).

*If the Minister certifies.*—Note the provisions in s. 5 of the Minister of Town and Country Planning Act, 1943 (Seal, style and acts of Minister) (36 Halsbury's Statutes 40).

As far as the court is concerned, the production of the certificate will be conclusive that possession of the house is immediately required for the purposes for which it was acquired or appropriated.

*Housing Act, 1936, s. 137.*—29 Halsbury's Statutes 660. This section enacts as follows:—

"Where under the powers given by any local Act or Provisional Order or Order having the effect of an Act (not being an order made under this Act), any land is acquired, whether compulsorily or by agreement, by any authority, company or person, or where any land is so acquired compulsorily under any general Act other than this Act, the provisions set out in the Eleventh Schedule to this Act shall apply with respect to the provision of housing accommodation for persons of the working classes."

For Sched. XI to that Act, see 29 Halsbury's Statutes 699 *et seq.*

*Rent and Mortgage Interest Restrictions Acts, 1920 to 1939.*—As to these Acts, see note to s. 52 of the 1947 Act, title LAND, ACQUISITION, SALE, ETC., OF, *ante*.

*Central Land Board.*—For the constitution and functions of the Board, see ss. 2 and 3 of the 1947 Act, *ante*.

*Small Tenements Recovery Act, 1838.*—10 Halsbury's Statutes 324.

*Sub-s. (5).*—This provision is permissive, but it must not be overlooked that the subsection requires the exercise of a discretion. "Discretion" means, when it is said that something is to be done within the discretion of the authorities, that that something is to be done within the rules of reason and justice; not according to private opinion, but according to law and not to humour. It is not to be arbitrary, vague and fanciful, but legal and regular (*Sharpe v. Wakefield*, [1891] A. C. 173, *per Lord HALSBURY, L.C.*). This principle appears to apply not only to the exercise of a strictly judicial discretion but also to the exercise of what might be termed an administrative discretion (see, for instance, *Roberts v. Hopwood*, [1925] A. C. 578).

The courts, however, interfere less readily with the exercise of an administrative discretion than with the exercise of a judicial discretion, observing the principle enunciated in *Kruse v. Johnson*, [1898] 2 Q. B. 91, that when a discretion is conferred upon a local authority the court ought to show great reluctance before they attempt to determine how, in their opinion, the discretion ought to be exercised.

*May pay, etc.*—In *Re Baker, Nichols v. Baker* (1890), 44 Ch. D. 262, COTTON, L.J., said: "I think that great misconception is caused by saying that in some cases 'may' means 'must.' It never can mean 'must' so long as the English language retains its meaning. . . . There is given by the word 'may' a power as to the exercise of which there is a discretion."

*Such reasonable allowance.*—See *Roberts v. Hopwood*, [1925] A.C. 578. It is suggested that an allowance may be unreasonable because it is unreasonably low as well as unreasonably high.

*As they think fit.*—In *Roberts v. Hopwood*, *supra*, Lord WRENBURY said: "Thirdly and lastly, I point to the word 'fit.' That word means, I think, 'fitting' or 'suitable.' The words 'as they think fit' do not mean 'as they choose.'" Yet the whole trend of the law at present is to withdraw from the courts any power to inquire into the question of "fitness" where *bona fides* is not in question (see the note to s. 4 of the 1947 Act, *ante*, on the phrase "If it appears to the Minister" and the cases there cited).

*Towards.*—This word is important, but it must be construed together with the word "reasonable."

*In their opinion.*—Applicants for allowances should give the authority adequate information on which to form an opinion.

*Shall have regard.*—These words are mandatory.

*Definitions.*—For definitions of "local authority," "building," "a Minister" and "land," see s. 119 (1) of the 1947 Act, *ante*.

**47. Provisions as to borrowing for purposes of the Town and Country Planning Act, 1947.**—(1) The power of the Public Works Loan Commissioners to make loans under section nine of the Public Works Loans Act, 1875, shall include power to make loans to a local authority for the purpose of the discharge by them of their functions under the Town and Country Planning Act, 1947.

(2) Notwithstanding anything in section three of the London County Council (Finance Consolidation) Act, 1912, the manner in which the London County Council may borrow shall include, in the case of money borrowed by them for the purpose aforesaid, borrowing from the said Commissioners in accordance with the Public Works Loans Acts, 1875 to 1882.

(3) So long as the making of an issue of capital in the United Kingdom without the consent of the Treasury is prohibited by regulations made under the Emergency Powers (Defence) Acts, 1939 and 1940, it shall not be lawful to exercise the powers of borrowing conferred by virtue of this Act without such consent. [2750]

\* \* \* \* \*

*General note.*—The original wording of this section has been amended by s. 113 of and Sched. VIII to the 1947 Act, *ante*.

The section empowers the Public Works Loan Commissioners to make loans to local authorities (including the London County Council) towards planning expenditure but no exemption is given from the emergency law as to the control of borrowing.

*Public Works Loan Commissioners.*—These Commissioners were constituted by s. 4 of the Public Works Loans Act, 1875 (12 Halsbury's Statutes 255), for the purpose of making loans out of moneys issued under that Act. The Commissioners are now appointed by the Crown, and are twelve in number with terms of office of four years, three Commissioners retiring annually (Public Works Loans Act, 1946, s. 4; 39 Halsbury's Statutes 311). They may now lend for any purpose for which, and for any period not exceeding the period for which, a local authority has power to borrow (Local Authorities Loans Act, 1945, s. 2; 38 Halsbury's Statutes 309).

*Public Works Loans Act, 1875.*—12 Halsbury's Statutes 255 *et seq.* This Act consolidated and amended the Acts then in force as to loans for public works.

*London County Council (Finance Consolidation) Act, 1912.*—2 & 3 Geo. 5, c. cv.

*Public Works Loans Acts, 1875 to 1882.*—These Acts comprise the Public Works Loans Act, 1875 (12 Halsbury's Statutes 255), the Public Works Loans Act, 1879 (12 Halsbury's Statutes 277), and the Public Works Loans Act, 1882 (12 Halsbury's Statutes 279).

*Regulations made, etc.*—See regulation 6 of the Defence (Finance) Regulations, 1939, S. R. & O., 1939, Nos. 950 and 1620 (as amended). On May 21, 1947, an order was made (S. R. & O., 1947, No. 944) revoking the said regulation 6 except in so far as it related to the making of public offers for sale of domestic securities of bodies corporate. On the same day the Treasury made under s. 1 of the Borrowing (Control and Guarantees) Act, 1946 (39 Halsbury's Statutes 314), the Control of Borrowing Order, 1947, S. R. & O., 1947, No. 945 which replaced the revoked provisions of the said regulation 6. See title FINANCE, *ante*.

*Emergency Powers (Defence) Acts, 1939 and 1940.*—32 Halsbury's Statutes 930; 33 Halsbury's Statutes 541, 552.

*Definitions.*—For definitions of "local authority" and "functions," see s. 119 (1) of the 1947 Act, *ante*.

**49. Works below high-water mark.**—Nothing in the Town and Country Planning Act, 1947, shall authorise the execution of any works whether of construction, demolition or alteration on, over or under tidal lands below high-water mark of



have been required if the Town and Country Planning Act, 1947, had not been passed, and except in accordance with such plans and sections and subject to such restrictions and conditions as, previous to such works being commenced, have been approved by the Minister of Transport. [2751]

*General note.*—This section as originally enacted has been amended by s. 113 of and Sched. VIII to the 1947 Act, *ante*, and here appears in its amended form.

The effect of the section is to make it clear that any necessary consents to works below high-water mark must still be obtained despite the provisions of the 1947 Act.

The Ministry of Town and Country Planning have advised authorities to ascertain in each instance what consents are required, since the departments concerned vary at different parts of the coast (Ministry of Town and Country Planning Circular No. 3/43).

**63. Regulations.**—(1) In this Act, except where the context otherwise requires, the expression “prescribed” means prescribed by regulations made by the Minister.

(2) Any regulations made under this Act shall be laid before Parliament as soon as may be after they are made, and if either House of Parliament within the period of forty days beginning with the day on which the regulations are laid before that House resolves that the regulations be annulled the regulations shall thereupon become void, without prejudice, however, to the validity of anything previously done thereunder or to the making of new regulations.

In reckoning any such period of forty days as aforesaid no account shall be taken of any time during which Parliament is dissolved or prorogued, or during which both Houses are adjourned for more than four days.

(3) Notwithstanding anything in subsection (4) of section one of the Rules Publication Act, 1893, regulations made under this Act shall be deemed not to be, or to contain, statutory rules to which that section applies. [2752]

*Note.*—This section is unamended by s. 113 of and Sched. VIII to the 1947 Act, *ante*.

*The Minister.*—The Minister of Town and Country Planning (s. 1 of the 1947 Act, *ante*).

*Effect of the Statutory Instruments Act, 1946.*—This Act came into full operation on January 1, 1948 (see S.I. 1948 No. 3). The effect of the Act is that documents made after its commencement in exercise of certain statutory powers conferred by Acts passed before its commencement are “statutory instruments” (s. 1 (2); 39 Halsbury’s Statutes 784); such documents require to be laid before Parliament in accordance with the provisions of s. 4 of that Act in substitution for the corresponding provisions of the present section, and the provisions of s. 5 of that Act for annulment in pursuance of resolution of either House of Parliament are substituted for the corresponding provisions of the present section.

Only such documents, however, as are made in exercise of certain statutory powers are to be “statutory instruments”; these powers are identified by reference to the Rules Publication Act, 1893 (18 Halsbury’s Statutes 1016), and are powers conferred on a “rule-making authority” to make “statutory rules,” both of which terms are defined in s. 4 of that Act. A statutory rule means a “rule, regulation, or bye-law made under any Act” by, among others, any government department. Regulations under the present section are therefore “statutory instruments” when made on or after January 1, 1948.

*Rules Publication Act, 1893, s. 1 (4).*—18 Halsbury’s Statutes 1016. This Act is repealed by s. 12 of the Statutory Instruments Act, 1946 (39 Halsbury’s Statutes 789).

**64. Powers of official arbitrator on references to him.**—An official arbitrator appointed in accordance with the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919, to whose determination any matter is referred under this Act shall have the like powers with respect to procedure, costs and the statement of special cases as he has under that Act. [2753]

*General note.*—This section as originally enacted is not amended by s. 113 of and Sched. VIII to the 1947 Act, *ante*, but the repeal of certain words forming part of the original section took effect as from August 6, 1947, the date of passing of the 1947 Act, by virtue of ss. 113 and 120 of and Sched. IX, Part I, to that Act, *ante*.

*Acquisition of Land (Assessment of Compensation) Act, 1919.*—2 Halsbury’s Statutes 1176. S. 1 (1) of that Act provides for questions of disputed compensation and other matters to be referred to and determined by the arbitration of one of a panel of official arbitrators selected in accordance with rules made by the appropriate Reference Committee.

As to procedure, costs and statement of special cases, see, in particular, ss. 3, 5 and 6 respectively of the 1919 Act (2 Halsbury’s Statutes 1179, 1180).

**65. Interpretation.**—(1) In this Act, except where the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say—

“appropriate Minister,” in relation to a statutory undertaking, has the same meaning as in the Town and Country Planning Act, 1947;

“development” includes re-development;



"Gazette and local advertisement" means, in relation to an application, order or certificate relating to any land, publication in the London Gazette and, in each of two successive weeks, in one or more newspapers circulating in the locality in which the land is situated ;

"owner," in relation to any building or land, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of the building or land, whether in possession or in reversion, and includes also a person holding or entitled to the rents and profits of the building or land under a lease of agreement, the unexpired term whereof exceeds three years ;

"purchasing authority" means a Minister, the Central Land Board, a local authority or any statutory undertakers purchasing under Part IV of the Town and Country Planning Act, 1947 ;

"statutory undertaking" has the same meaning as in the Town and Country Planning Act, 1947.

(2) References in this Act to any other enactment shall, unless the context otherwise requires, be construed as references to that enactment as amended by this Act or by or under any other enactment.

(3) Words in this Act importing a reference to service of a notice to treat shall be construed as including a reference to the constructive service of such a notice which by virtue of the Sixth Schedule to this Act or of any other enactment, is to be deemed to be served.

(4) Any reference in this Act to the Town and Country Planning Act, 1947, or to Part IV of that Act shall be construed as including a reference to any provisions of this Act incorporated with the said Part IV. [2754]

*General note.*—Several amendments to this section as originally enacted have been effected by s. 113 of and Sched. VIII to the 1947 Act, *ante*. In addition, a number of the definitions appearing in the original section have been repealed as from the appointed day by virtue of ss. 113 and 120 of and Sched. IX, Part II, to the 1947 Act, *ante*. The section here appears in its modified form. The appointed day is July 1, 1948 (S.I. 1948 No. 213).

*Appropriate Minister.*—By s. 119 (1) of the 1947 Act, *ante*, this expression means :—

"(a) in relation to statutory undertakers carrying on an undertaking for the supply of electricity, gas or hydraulic power, the Minister of Fuel and Power ;

"(b) in relation to statutory undertakers carrying on an undertaking for the supply of water, the Minister of Health ; and

"(c) in relation to any other statutory undertakers as defined by this Act, the Minister of Transport."

*Development.*—The definition appearing in this section is not exhaustive. Note the definition of the term in s. 12 of the 1947 Act, *ante*.

*Owner.*—Compare this definition with that in s. 119 (1) of the 1947 Act, *ante*. The phrase "lease of agreement," which appears in the King's Printer's copy, is obviously a misprint for "lease or agreement."

*Purchasing authority.*—As to "a Minister," "local authority" and "statutory undertakers," see s. 119 (1) of the 1947 Act, *ante*. For the constitution of the Central Land Board, see s. 2 of that Act, *ante*.

*Statutory undertaking.*—S. 119 (1) of the 1947 Act, *ante*, defines "statutory undertakers" as "persons authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, or any undertaking for the supply of electricity, gas, hydraulic power or water," and enacts that "statutory undertaking" is to be construed accordingly.

*Enactment.*—See s. 119 (1) of the 1947 Act, *ante*.

*Sub-s. (4).*—This subsection, inserted by s. 113 of and Sched. VIII to the 1947 Act, *ante*, is new.

**66. Short title and extent.**—(1) This Act may be cited as the Town and Country Planning Act, 1944.

(2) This Act shall not extend to Scotland or to Northern Ireland. [2755]

*General note.*—This short section is unamended and no part of it has been repealed by the 1947 Act, *ante*.

## TOWN AND COUNTRY PLANNING ACT, 1944

### Section 114

### FIRST SCHEDULE

#### PROCEDURE FOR DEALING WITH OBJECTIONS UNDER SECTIONS 26 AND 27

1.—(1) The following provisions of this Schedule shall have effect where an objection is duly made to the making of an order under section twenty-six or twenty-seven of this Act, and is not withdrawn.

(2) An objection shall not be deemed for the purposes of any of the said enactments or of this Schedule to be duly made unless—

- (a) it is made within the time and in the manner specified in the notice required by the relevant enactment referred to in the preceding sub-paragraph, and
- (b) the objection comprises, or there is submitted therewith, a statement in writing of the grounds thereof.

(3) In this Schedule, the expression "the Minister" means the Minister or Ministers having jurisdiction to make or confirm the order in question.

2. Unless the Minister decides apart from the objection not to make or confirm the order, or decides to make a modification agreed to by the person making the objection as meeting the objection, the Minister shall, before deciding whether to make or confirm the order, or what modification if any ought to be made, consider the grounds of the objection as set out in the statement, and may, if he thinks fit, require the person making the objection to submit within a specified period a further statement in writing as to any of the matters to which the objection relates.

3. In so far as the Minister is satisfied, after considering the grounds of the objection as set out in the original statement and any such further statement, that the objection relates to a matter which can be dealt with by an arbitrator by whom compensation is to be assessed, the Minister may treat the objection as irrelevant for the purpose of his deciding as aforesaid.

4. If after considering the grounds of the objection as set out in the original statement and any such further statement, the Minister is satisfied that he is sufficiently informed, for the purpose of his deciding as aforesaid, as to the matters to which the objection relates, or if where a further statement has been required it is not submitted within the specified period, the Minister may decide as aforesaid without further investigation as to those matters.

5. Subject as mentioned in the two last preceding paragraphs, the Minister shall, before deciding as aforesaid, afford to the person making the objection an opportunity of appearing before and being heard by a person appointed for the purpose by the Minister, and if he avails himself thereof the Minister shall afford an opportunity of appearing and being heard on the same occasion to the authority or other person (if any) making the application or representation or submitting the order in question and to any other persons to whom it appears to the Minister to be expedient to afford it.

6. Notwithstanding anything in paragraphs 2 to 5 of this Schedule, if it appears to the Minister that the matters to which the objection relates are such as to require investigation by public local inquiry before he decides as aforesaid, he shall cause such an inquiry to be held, and where he determines to cause such an inquiry to be held any of the requirements of those paragraphs to which effect has not been given at the time when he so determines shall be dispensed with. [2756]

*General note.*—This Schedule here appears (a) as slightly amended by s. 113 of and Sched. VIII to the 1947 Act, *ante*; and (b) after allowing for the repeals taking effect as from July 1, 1948, by virtue of ss. 113 and 120 of and Sched. IX, Part II, to that Act.

The provisions of this Schedule are relevant to the extension and modification of the powers and duties of statutory undertakers (s. 26 of the 1947 Act, *ante*) and the relief of statutory undertakers from obligations rendered impracticable by the exercise of powers under the 1947 Act (s. 27 of the 1944 Act, *ante*).

*Duly made.*—See para. 1 (2), *supra*. The importance of seeing that an objection is "duly made" is stressed. The Minister cannot dispense with or relax the requirements of this sub-paragraph and an objection which is not "duly made" cannot be considered.

*Grounds of the objection.*—These should comprise a fair statement of all the matters on which the objector relies (cf. *Estate and Trust Agencies* (1927), *Ltd. v. Singapore Improvement Trust*, [1937] A. C. 898; [1937] 3 All E. R. 324, at p. 331). The grounds of objection will, as a rule, fall under two heads:

- (1) Legal points; and
- (2) Grounds going to the merits of the case.

Obviously in order to ascertain whether any legal grounds are open to the objector, it will be necessary to study the relevant provisions of the Act very carefully and to scrutinise the procedure adopted by the authority making the order to see if there has been due compliance with all conditions precedent.

With regard to objections relating to the merits of the case, the maxim that "private interests must yield to the public good" must always be borne in mind. An objection is only likely to succeed if it can be shown that it is in the public interest that it should succeed. There may, however, be rare cases in which an objection will succeed on the ground that the proposed order, if made or confirmed, would cause the objector great hardship.

*The Minister.*—This definition is important. If objections have to be lodged with "the Minister," it will mean "the Minister" as defined by this Schedule.

*Modification.*—See *Minister of Health v. R., Ex parte Yaffe*, [1931] A. C. 494.

*If he thinks fit : in so far as the Minister is satisfied.*—See note to s. 4 of the 1947 Act, *ante*, on the phrase "If it appears to the Minister."

*Can be dealt with by an arbitrator.*—It is therefore useless to object to a compulsory purchase order on the ground that the compensation offered by the acquiring authority is inadequate.

*For the purposes of his deciding as aforesaid.*—*I.e.*, for the purpose of deciding whether to make or confirm the order or what modification, if any, ought to be made (para. 2, *ante*).

*Without further investigation of those matters.*—*I.e.*, without further investigation of the matters to which the objection relates.

In the circumstances mentioned in para. 4, *ante*, the Minister may decide "as aforesaid" without affording the objector an opportunity of appearing before and being heard by a person appointed for the purpose by him (para. 5, *ante*) or without holding a local inquiry (para. 6, *ante*).

Although the Minister may decide the matter without affording the objector an oral hearing, in so deciding he is still required to act "judicially." This means that :—

1. He must act in good faith and fairly ;
2. He must give the objector and any other party to the controversy a fair opportunity for correcting or contradicting any relevant statement prejudicial to his point of view ; and
3. He ought not to view property in the company of one party without giving the other party an opportunity of being present (*Errington v. Minister of Health*, [1935] 1 K. B. 249).

*Para. 5.*—Whether the hearing mentioned in this paragraph will take the form of a local inquiry or not (see para. 6, *ante*) will depend on the circumstances. A person appointed by the Minister or an inspector holding a local inquiry on behalf of the Minister is not a court of law bound by the rules of procedure relating to such courts. As no procedure is prescribed he can determine his own procedure (*Board of Education v. Rice*, [1911] A. C. 179). The Minister may decide any question of law as well as of fact arising in the course of the proceedings (*Board of Education v. Rice*, *supra*). The Minister need not give reasons for his decision (*Broadbent v. Rotherham Corpn.* (No. 2) (1918), 87 L. J. (Ch.) 308) and he need not disclose the report of the person who hears the parties, or that of an inspector acting on his behalf (*Local Government Board v. Arlidge*, [1915] A. C. 120) ; *Denby (William) & Sons, Ltd. v. Minister of Health*, [1936] 1 K. B. 337).

*Public local inquiry.*—As to public local inquiries, see the notes to s. 104 of the 1947 Act, *ante*.

## TOWN AND COUNTRY PLANNING ACT, 1944

### FOURTH SCHEDULE

#### ASSESSMENT OF COMPENSATION TO STATUTORY UNDERTAKERS

##### PART I

##### *Amount of Compensation*

##### 1. The compensation to be paid—

- (a) in respect of any decision given under paragraph 1 of the Fifth Schedule to the Town and Country Planning Act, 1947, refusing permission to develop operational land or granting such permission subject to conditions ;
- (b) in respect of any decision given by a government department under paragraph 2 of that Schedule refusing the authorisation of that department in respect of any development of such land, or directing that permission to develop such land shall be deemed to be granted subject to conditions ;
- (c) in respect of any order made under paragraph 3 of that Schedule revoking or modifying permission to develop such land ;
- (d) in respect of any order made under paragraph 4 of that Schedule in relation to such land ;
- (e) in respect of the extinguishment of any right or the imposition of any requirement, under section twenty-five of this Act as applied for the purposes of Part IV of the said Act ;
- (f) in respect of any such compulsory purchase as is mentioned in subsection (5) of section forty-five of the said Act ;

shall in default of agreement be assessed by the arbitration of the tribunal constituted in accordance with the provisions of Part II of this Schedule, and the amount of the compensation shall be an amount calculated in accordance with the provisions of the next following paragraph :

Provided that, as respects compensation in respect of a compulsory purchase, if, before the expiration of two months from the date on which notice to treat is served in respect of the interest of the person by whom the statutory undertaking is carried on, that person gives notice in writing to the purchasing authority that he elects that as respects all or any of the land comprised in the purchase the compensation shall be ascertained in accordance with the enactments, other than rule (5) of the rules set out in section two of the Acquisition of Land (Assessment of Compensation) Act, 1919, which would be applicable apart from the provisions of this Schedule, the compensation shall be so ascertained.

2.—(1) The amount of the said compensation shall, subject to the provisions of this paragraph, be the aggregate of the following amounts, that is to say,—

- (a) the amount of any expenditure reasonably incurred in acquiring land, providing apparatus, erecting buildings or doing work for the purpose of any adjustment of the carrying on of the undertaking rendered necessary by the proceeding giving rise to compensation ; and
- (b) where any such adjustment is made, the estimated amount of any decrease in net receipts from the carrying on of the undertaking pending the adjustment, in so far as the decrease is directly attributable to the said proceeding, together with such amount as appears reasonable compensation for any estimated decrease in net receipts from the carrying on of the undertaking in the period after the adjustment has been completed, in so far as the decrease is directly attributable to the adjustment ; or
- (c) where no such adjustment is made, such amount as appears reasonable compensation for any estimated decrease in net receipts from the carrying on of the undertaking which is directly attributable to the proceeding giving rise to compensation ; and
- (d) in the case of compensation in respect of the imposition of a requirement under section twenty-five of this Act to remove any apparatus, any expense reasonably incurred by the person carrying on the undertaking in complying with the requirement, reduced by the value after removal of the apparatus removed.

(2) The amount of any compensation assessed in accordance with the preceding sub-paragraph shall be reduced by such amount (if any) as appears to the tribunal to be appropriate to offset—

- (a) the estimated value of any property (whether moveable or immoveable) belonging to the person carrying on the statutory undertaking in question and used for the carrying on thereof which as the result of any such adjustment as is mentioned in the preceding sub-paragraph ceases to be so used, in so far as the value of the property has not been taken into account under head (d) of the preceding sub-paragraph ; and
- (b) the estimated amount of any increase in net receipts from the carrying on of the undertaking in the period after any such adjustment has been completed, in so far as that amount has not been taken into account under head (b) of the preceding sub-paragraph and is directly attributable to the adjustment,

and by any further amount which appears to the tribunal to be appropriate having regard to any increase in the capital value of immoveable property belonging to the person carrying on the statutory undertaking in question which is directly attributable to any such adjustment as aforesaid, allowance being made for any reduction made under head (b) of this sub-paragraph.

(3) References in this paragraph to a decrease in net receipts shall be construed as references to the amount by which a balance of receipts over expenditure is decreased, or of expenditure over receipts is increased, or, where a balance of receipts over expenditure is converted into a balance of expenditure over receipts, as references to the aggregate of the two balances ; and references to an increase in net receipts shall be construed accordingly.

(4) In this paragraph the expression “ proceeding giving rise to compensation ” means the particular action (that is to say, purchase, extinguishment of a right, imposition of a requirement, refusal of permission, grant of permission subject to conditions, or revocation or modification of permission or order under paragraph 4 of the Fifth Schedule to the Town and Country Planning Act, 1947) in respect of which compensation falls to be assessed, as distinct from any development or project in connection with which the action in question may have been taken.

## PART II

*Tribunal for assessment of compensation to statutory undertakers*

3.—(1) The tribunal for the assessment of compensation referred to in Part I of this Schedule shall consist of four persons, namely—

- (a) a barrister or solicitor of not less than seven years' standing, appointed by the Lord Chancellor to act as chairman ;
- (b) two persons appointed by the Minister as persons having special knowledge and experience of the valuation of land and of civil engineering respectively; and
- (c) for each claim coming before the tribunal, a person selected by the appropriate Minister, as a person having special knowledge and experience of statutory undertakings of the kind carried on by the claimant, from the members of a panel appointed by appropriate Ministers of persons appearing to them to have such knowledge and experience of statutory undertakings.

(2) The Treasury may pay out of moneys provided by Parliament to the members of the tribunal such remuneration (whether by way of salaries or by way of fees), and such allowances, as the Treasury may determine.

(3) The provisions of sections three, five and six of the Acquisition of Land (Assessment of Compensation) Act, 1919, shall apply in relation to the tribunal and proceedings before the tribunal as they apply in relation to an official arbitrator and proceedings before an official arbitrator, with the substitution for references in the said section five to the acquiring authority of references to the person from whom compensation is claimed and with the modification that rules regulating the procedure before the tribunal shall be made by the Lord Chancellor. [2757]

*General note.*—It may be convenient to consider both parts of this Schedule together. The Schedule as it here appears has been amended by s. 113 of and Sched. VIII to the 1947 Act, *ante*, in particular by the insertion of new paragraphs (a) to (f) in para. 1, *ante*.

In the cases listed in those paragraphs the compensation to be paid to statutory undertakers is to be assessed by the specialised arbitration tribunal provided for by Part II of the Schedule, *supra*, but without prejudice to agreement between the parties. In practice, agreement as to compensation will be possible in a large proportion of the cases arising.

Para. 2 in Part I of the Schedule, *ante*, sets out the formula to be applied in assessing the actual amount of the compensation payable, though in cases of compulsory purchase to which the Schedule applies a limited right of election is allowed by the proviso to para. 1, *ante*.

*Acquisition of Land (Assessment of Compensation) Act, 1919, s. 2, Rule (5).*—2 Halsbury's Statutes 1178. This Rule, which deals with reinstatement in the case of special land, reads as follows :—

“Where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the official arbitrator is satisfied that reinstatement in some other place is bona fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement.”

*Proceeding giving rise to compensation.*—Note the definition of the term in para. 2 (4), *ante*.

*Immoveable property.*—In Canada a gas main laid in the earth has been held to be an “immoveable” (*Montreal Light, Heat and Power Consolidated v. Outremont (City)*, [1932] A. C. 423).

In another case the existence of a building immoveable by nature was said to involve two things, namely, the existence of a structure and that such structure is incorporated with or adherent to the soil (*Bell Telephone Co. of Canada v. St. Laurent (Ville)*, [1936] A. C. 73, P. C.).

*Acquisition of Land (Assessment of Compensation) Act, 1919, ss. 3, 5 and 6.*—2 Halsbury's Statutes 1179, 1180. These are the provisions as to procedure, costs and statement of special cases applied in another connection by s. 64 of the 1944 Act, *ante*.

*Definitions.*—As to “develop,” see s. 65 (1) of the 1944 Act, *ante*, and ss. 12 and 119 (1) of the 1947 Act, *ante*; as to “statutory undertaking,” see s. 65 (1) of the 1944 Act, *ante*, and s. 119 (1) of the 1947 Act, *ante*; and as to “purchasing authority” and “appropriate Minister,” see s. 65 (1) of the 1944 Act, *ante*. For definitions of “operational land,” “government department,” “land,” “enactment,” “erect” and “building,” see s. 119 (1) of the 1947 Act, *ante*.

## TOWN AND COUNTRY PLANNING ACT, 1944

## FIFTH SCHEDULE

## MODIFICATIONS OF ACQUISITION OF LAND (ASSESSMENT OF COMPENSATION) ACT, 1919

9.—(1) As respects any house in the area of a local authority for the purposes of the provisions of Part III of the Housing Act, 1936, relating to clearance areas, which

in their opinion is unfit for human habitation and not capable at reasonable expense of being rendered so fit, and which is comprised—

- (a) in land designated by a development plan under the Town and Country Planning Act, 1947, as subject to compulsory acquisition; or
- (b) in land which is proposed to be acquired compulsorily under subsection (2) of section thirty-seven or subsection (2) of section thirty-eight of that Act;

the local authority for the purposes of the said provisions of the said Part III may make and submit to the Minister of Health an order in such form as may be prescribed by regulations made by the said Minister under section one hundred and seventy-six of the Housing Act, 1936, declaring the house to be in that state, and, if the order is confirmed by him, the compensation to be paid for the house on a compulsory purchase thereof pursuant to any authorisation given under Part IV of the Town and Country Planning Act, 1947, by the Minister having jurisdiction to give such authorisation, either before or within two years after the confirmation by the Minister of Health of the order submitted under this paragraph, shall be assessed in like manner as if it had been land purchased compulsorily under the said Part III of the Housing Act, 1936, as being comprised in a clearance area, and the Acquisition of Land (Assessment of Compensation) Act, 1919, shall accordingly have effect, in its application for the purposes of Part IV of the Town and Country Planning Act, 1947, subject to this provision.

(2) Before submitting an order under this paragraph to the Minister of Health, the local authority shall serve on every owner, and, so far as it is reasonably practicable to ascertain such persons, on every mortgagee, of the house or of any part thereof, a notice in such form as may be prescribed as mentioned in the preceding sub-paragraph, stating the effect of the order and that it is about to be submitted to the said Minister for confirmation, and specifying the time within which, and the manner in which, objection thereto can be made.

(3) If no objection is duly made by any of the persons on whom notices are required to be served, or if all objections so made are withdrawn, the said Minister may, if he thinks fit, confirm the order, but in any other case he shall before confirming the order consider any objection not withdrawn and shall, if either the person by whom the objection was made or the local authority so desire, afford that person and the authority an opportunity of appearing before and being heard by a person appointed by the said Minister for the purpose, and may then, if he thinks fit, confirm the order.

(4) Where the provisions of sub-paragraph (1) of this paragraph have effect as to the compensation to be paid for a house on a compulsory purchase thereof under Part IV of the Town and Country Planning Act, 1947, the provisions of section forty-two of the Housing Act, 1936 (which relate to payments in respect of well-maintained houses) shall have effect, as they have effect where a house is made the subject of a compulsory purchase order under the said Part III of the Housing Act, 1936, as being unfit for human habitation, if the Minister of Health is satisfied as mentioned in that section on a representation made to him by a person who would be entitled to any payment under that section or to a share thereof within three months from his first becoming aware that a notice to treat for the purchase of any interest in the house has been served:

Provided that, in the application of that section for the purposes of this sub-paragraph, there shall be substituted, for references therein to the local authority therein mentioned and to the order therein mentioned, references respectively to the purchasing authority and to the order by which the purchase of the house is authorised.

(5) In this paragraph the expression "house" has the same meaning as in the Housing Act, 1936, and in determining for the purposes of this paragraph whether a house is fit for human habitation regard shall be had to the matters to which regard is required by that Act to be had in determining that question for the purposes of that Act, and sections one hundred and fifty-seven and one hundred and fifty-eight of that Act (which relate to the surveying and examination of land) shall have effect as if the powers conferred by this paragraph were powers under that Act. [2758]

*General note.*—By ss. 113 and 120 of and Sched. IX, Part II, to the 1947 Act, *ante*, paras. 1 to 8 and 10 of this Schedule are repealed as from the appointed day and accordingly none of these paragraphs appears in the text. In addition, s. 113 of and Sched. VIII to the 1947 Act, *ante*, make a number of amendments, mostly of a minor character, to the remaining para. 9 which appears in the text in its amended form. The appointed day is July 1 1948.



The Schedule as it now stands modifies the Acquisition of Land (Assessment of Compensation) Act, 1919 (2 Halsbury's Statutes 1176), by empowering local authorities to submit orders to the Minister of Health declaring houses in their area to be unfit for human habitation and incapable of being rendered fit for such habitation at reasonable expense. If the order is confirmed by that Minister the compensation payable is to be assessed as for land in a clearance area being compulsorily purchased under Part III of the Housing Act, 1936 (29 Halsbury's Statutes 584 *et seq.*). Authorisation to purchase compulsorily is to be given by the appropriate Minister either before or within two years after the Minister of Health's confirmation. Provision is made for service of notices, objections and other matters.

*House.*—Para. 9 (5), *ante*, applies for the purposes of this Schedule the definition of the term "house" in the Housing Act, 1936 (29 Halsbury's Statutes 565 *et seq.*). By s. 188 (1) of that Act (29 Halsbury's Statutes 681) "house" includes any yard, garden, outhouses, and appurtenances belonging thereto or usually enjoyed therewith.

As to the meaning of "house," see also *Re Bainbridge, South Shields (D'Arcy Street) Compulsory Purchase Order*, 1937, [1939] 1 K. B. 500; [1939] 1 All E. R. 419 (shop and living-rooms) and *Re Butler, Camberwell (Wingfield Mews) No. 2 Clearance Order*, 1936, [1939] 1 K. B. 570; [1939] 1 All E. R. 590 (news).

*Part III of the Housing Act, 1936.*—29 Halsbury's Statutes 584 *et seq.* This Part of the Act, which comprises ss. 25 to 56, inclusive, deals with clearance and re-development.

For ss. 42, 157, 158 and 176 of the same Act, see 29 Halsbury's Statutes 599, 668, 669, 676.

*Unfit for human habitation.*—For notes on this phrase and as to the law relating to clearance areas generally, see Hill's Complete Law of Housing (Fourth Edition).

*Designated as subject to compulsory acquisition.*—See ss. 5 (2) and 37 *et seq.* of the 1947 Act, *ante*.

*Acquisition of Land (Assessment of Compensation) Act, 1919.*—2 Halsbury's Statutes 1176.

*The said Minister.*—That is, the Minister of Health.

*If he thinks fit; if the Minister of Health is satisfied.*—See the note to s. 4 of the 1947 Act on the phrase "If it appears to the Minister."

*Opportunity of appearing before and being heard.*—This need not take the form of a public local inquiry.

*Definitions.*—As to "development plan," see ss. 5 and 119 (1) of the 1947 Act, *ante*. For definition of "local authority," see s. 119 (1) of the 1947 Act, *ante*, and for that of "purchasing authority," see s. 65 (1) of the 1944 Act, *ante*.

## TOWN AND COUNTRY PLANNING ACT, 1944

### SIXTH SCHEDULE

#### PROCEDURE FOR COMPLETION OF COMPULSORY PURCHASE UNDER ORDERS PROVIDING FOR EXPEDITED COMPLETION

##### PART I

##### *Procedure for expedited completion*

1.—(1) Except as provided by sub-paragraph (3) of this paragraph, when a purchasing order providing for expedited completion has come into operation, the Lands Clauses Acts and the Acquisition of Land (Assessment of Compensation) Act, 1919, shall have effect as if a notice to treat (that is to say, such a notice as is mentioned in section eighteen of the Lands Clauses Consolidation Act, 1845) had been served on every person on whom the purchasing authority could under the terms of that section (and on the assumption of their requiring to purchase or take all the land as respects which this Schedule applies by virtue of the order, and of their having knowledge of all parties referred to in that section) have served such a notice.

(2) The date on which a notice to treat is to be deemed by virtue of the preceding sub-paragraph to have been served on any party in respect of any interest in land shall be the date on which the order is registered in the register of local land charges by the proper officer of the council mentioned in subsection (2) of section thirty-nine of the Town and Country Planning Act, 1947, in whose area that land is situated.

(3) Notwithstanding anything in sub-paragraph (1) of this paragraph, no notice to treat shall be deemed to be served on any person in respect of an interest being either—

- (a) a minor tenancy (that is to say a tenancy for a year or from year to year or any less interest); or
- (b) a long tenancy which is about to expire (that is to say, a tenancy granted for an interest greater than a minor tenancy but having, at the date when apart from this provision notice to treat would be deemed by virtue of the said sub-paragraph (1) to be served on the owner of the tenancy, still to run only such period longer than a year as may be specified in the order for the purposes of the operation of this provision in relation to the land in



which the tenancy subsists, the period which the tenancy has then still to run being ascertained on the assumption that the tenant will exercise any option to renew the tenancy, and will not exercise any option to determine the tenancy, then or thereafter available to him, and that the landlord will exercise any option to determine the tenancy then or thereafter available to him).

(4) The reference in sub-paragraph (1) of this paragraph to the Lands Clauses Acts and the Acquisition of Land (Assessment of Compensation) Act, 1919, is to those enactments as modified by the Second Schedule to the Acquisition of Land (Authorisation Procedure) Act, 1946, by the Fifth Schedule to this Act, and by paragraph 8 and Part II of this Schedule.

2. The notice of the confirmation of an order authorising compulsory purchase required by the Acquisition of Land (Authorisation Procedure) Act, 1946, to be published shall, in the case of a purchase order providing for expedited completion, include a notification to the effect that every person entitled to claim compensation in respect of any of the land as respects which this Schedule applies by virtue of the order, or in respect of any interest in any such land, is invited to give information to the purchasing authority in such form as may be prescribed of his name and address and of the land and interest in question.

3.—(1) At any time or from time to time after the coming into operation of a purchase order providing for expedited completion, but not earlier than such time as is mentioned in sub-paragraph (2) of this paragraph, the purchasing authority may execute, as respects an area consisting either of the whole or a part of the land as respects which this Schedule applies by virtue of the order, a declaration designating that area and stating—

- (a) their intention to enter on the land in the designated area and take possession thereof at the expiration of such period (not being less than fourteen days) as may be specified therein from the date on which the service of notices on occupiers required by sub-paragraph (3) of this paragraph is completed ; and
- (b) that the land in the designated area is to vest in the authority at the expiration of that period.

(2) The earliest time at which such a declaration may be executed shall be the expiration of two months from the date of first publication of the notice of confirmation of the order required by the Acquisition of Land (Authorisation Procedure) Act, 1946, to be published :

Provided that the order may provide for the substitution of a period longer or shorter than two months for the purposes of the operation of this sub-paragraph as respects any land, so however, that provision for the substitution of a shorter period shall not be so made in relation to any land unless the order as submitted made such provision in relation thereto.

(3) As soon as may be after executing such a declaration the purchasing authority shall serve upon every occupier of any of the land in the area designated thereby (other than any of the land therein in which a minor tenancy, or a long tenancy which is about to expire, is subsisting), and on every other person who has given information to the authority in relation to any of the land therein pursuant to such invitation as is mentioned in paragraph 2 of this Schedule, a notice describing that area and stating the effect of the declaration.

(4) At the expiration of the period specified in such a declaration from the date on which the service of notices on occupiers required by the last preceding sub-paragraph is completed (as to which date a certificate given by the purchasing authority shall be conclusive)—

- (a) there shall vest in the purchasing authority the right to enter on and take possession of the land in the area designated by the declaration or any of it without previous consent or compliance with sections eighty-four to ninety of the Lands Clauses Consolidation Act, 1845 ; and
- (b) the land in the area designated by the declaration shall vest in the purchasing authority as if the circumstances in which under that Act the promoters of an undertaking have powers to execute a deed poll for vesting in them lands or any estate or interest in lands, or for the extinguishment of, or of a portion of, any rent service, rentcharge, chief or other rent, payment or incumbrance, had arisen as regards all the said land and, subject to the

next succeeding sub-paragraph, as regards all interests therein, and the authority had duly exercised those powers accordingly at the expiration of the said period ;

but the purchasing authority shall be liable to pay the like compensation for the said land, and interest on the compensation agreed or awarded, as they would have been required to pay if the provisions of sections eighty-four to ninety of the said Act, and the provisions thereof compliance with which would have been requisite in order to render the said powers exercisable by them, had been complied with.

(5) Notwithstanding anything in sub-paragraph (1) or (4) of this paragraph, the following provisions shall have effect as respects land in an area designated by a declaration made under sub-paragraph (1) of this paragraph in which a minor tenancy, or a long tenancy which is about to expire, is subsisting, that is to say—

(a) in the case of a minor tenancy, the right of entry conferred by sub-paragraph (4) of this paragraph shall not be exercisable and the vesting of the land in the authority shall be subject to the tenancy during its subsistence, but without prejudice to any power to require a tenant to give up possession exercisable by the purchasing authority by virtue of the Lands Clauses Acts ;

(b) in the case of a long tenancy which is about to expire, the right of entry conferred by sub-paragraph (4) of this paragraph shall not be exercisable unless or until the purchasing authority have served notice to treat in respect of the tenancy and they have thereafter served a notice upon every occupier of any of the land in which the tenancy subsists describing the land to which the notice relates and stating their intention to enter on and to take possession thereof at the expiration of such period (not being less than fourteen days) from the date on which the notice is served as may be therein specified, and that period has expired, and the vesting of the land in the authority shall be subject to the tenancy until the expiration of that period or the cesser of the tenancy, whichever first occurs.

(6) Every notice of the confirmation of a purchase order providing for expedited completion required by the Acquisition of Land (Authorisation Procedure) Act, 1946, to be published shall refer to the provisions as to entry and vesting contained in sub-paragraph (4) of this paragraph.

(4) Where the land as respects which this Schedule applies by virtue of a purchase order providing for expedited completion comprises part only of any house, building or manufactory, or of a park or garden belonging to a house, then if at any time after the coming into operation of the order and before the making of a declaration under the last preceding paragraph as respects the said part any person having an interest therein in respect of which a notice to treat would otherwise be deemed by virtue of this Schedule to have been served gives notice to the purchasing authority in that behalf, no notice to treat shall be deemed by virtue of this Schedule to have been served in respect of any interest in the said part, and as from the giving of the notice the order shall have effect in relation to the said part as if this Schedule had not been applied thereto.

5.—(1) Where the compensation payable in respect of an interest which becomes vested in a purchasing authority by virtue of paragraph 3 of this Schedule is not finally ascertained at the time of such vesting, section twelve of the Finance Act, 1895, (which provides for the collection of stamp duty, where property is vested by way of sale by virtue of an Act, within three months from the date of vesting) shall have effect, as respects the vesting of that interest, with the substitution for the reference therein to the date of vesting of a reference to the date on which the compensation has become finally ascertained.

(2) Where after the vesting in a purchasing authority under paragraph 3 of this Schedule of any land a person retains possession of any document relating to the title to the land, he shall be deemed to have given to the authority an acknowledgment in writing of the right of the authority to production of that document and to delivery of copies thereof, and (except where he retains possession of the document as mortgagee or as trustee or otherwise in a fiduciary capacity) an undertaking for safe custody thereof, and section sixty-four of the Law of Property Act, 1925, shall have effect accordingly, and on the basis that the acknowledgment and undertaking did not contain any such expression of contrary intention as is mentioned in that section.

## PART II

*Adjustments where provision for expedited completion made*

6.—(1) The time within which a question of disputed compensation arising out of an acquisition of an interest in land in respect of which a notice to treat is deemed to have been served by virtue of this Schedule may be referred to arbitration shall be the expiration of six years from the date at which the person claiming compensation or a person under whom he derives title first knew, or could reasonably be expected to have known, of the vesting of the interest by virtue of paragraph 3 of this Schedule.

(2) This paragraph shall be construed as one with Part I of the Limitation Act, 1939.

7. The power conferred by subsection (2) of section five of the Acquisition of Land (Assessment of Compensation) Act, 1919, or that subsection as applied by paragraph 3 of the Fourth Schedule to this Act, to withdraw a notice to treat shall, in the case of a notice to treat which is deemed to have been served by virtue of this Schedule, not be exercisable at any time after the vesting by virtue of paragraph 3 of this Schedule of the interest in respect of which the notice is deemed to have been served.

8. In relation to a compulsory purchase authorised by a purchase order providing for expedited completion, being a purchase of an interest in respect of which a notice to treat is deemed to have been served by virtue of this Schedule, the following sections of the Lands Clauses Consolidation Act, 1845, shall be excepted from the incorporation of that Act with the Acquisition of Land (Authorisation Procedure) Act, 1946, that is to say, sections fifty-eight to sixty-two and sixty-four to sixty-seven (which relate to the mode of ascertaining compensation to absent parties), section ninety-two (which relates to sales of parts of buildings) and sections one hundred and twenty-four to one hundred and twenty-six (which relate to interests which have by mistake been omitted to be purchased).

9.—(1) Where any of the land as respects which this Schedule applies by virtue of a purchase order providing for expedited completion constitutes a part only of land charged with a rentcharge, the following provisions of this paragraph shall have effect.

(2) Any question as to the apportionment mentioned in section one hundred and sixteen of the Lands Clauses Consolidation Act, 1845, shall be referred and determined as mentioned in section one of the Acquisition of Land (Assessment of Compensation) Act, 1919.

(3) Such portion of the rentcharge as may be apportioned under the said section one hundred and sixteen to the land as respects which this Schedule applies by virtue of the order shall be treated as having been extinguished by virtue of paragraph 3 of this Schedule on the vesting of that land in the purchasing authority under that paragraph, and sections one hundred and fifteen to one hundred and eighteen of the Lands Clauses Consolidation Act, 1845, shall have effect as if the extinguishment had taken place under section one hundred and seventeen thereof:

Provided that if the person entitled to the rentcharge and the owner of the land subject thereto enter into an agreement to that effect, the said sections one hundred and fifteen to one hundred and eighteen shall have effect as if the person entitled to the rentcharge had released therefrom the land as respects which this Schedule applies by virtue of the order, on the condition mentioned in the said section one hundred and sixteen, at the time of the vesting of that land in the purchasing authority under paragraph 3 of this Schedule, and in that case none of the rentcharge shall be treated as having been extinguished by virtue of that paragraph so far as regards the remaining part of the land charged therewith.

(4) In this paragraph references to a rentcharge include references to any such rent service, chief or other rent, or other payment or incumbrance as is mentioned in the words introductory to the said sections one hundred and fifteen to one hundred and eighteen.

10. Where any of the land as respects which this Schedule applies by virtue of a purchase order providing for expedited completion constitutes a part only of land comprised in a lease for a term of years unexpired, section one hundred and nineteen of the Lands Clauses Consolidation Act, 1845, shall have effect subject to the modification that for references therein to the time of the apportionment of rent therein

mentioned there shall be substituted references to the time of the vesting in the purchasing authority of the leasehold interest in the first-mentioned land under paragraph 3 of this Schedule.

11. Any person who in consequence of the vesting of any land in the authority by virtue of paragraph 3 of this Schedule is relieved from any liability, whether in respect of a rentcharge, rent under a lease, mortgage interest or any other matter, and who makes any payment as in satisfaction or part satisfaction of that liability shall, if he shows that when he made the payment he did not know of the facts which constitute the cause of his being so relieved or of some one or more of them, be entitled to recover the sum paid as money had and received to his use by the person to whom it was paid. [2759]

*General note.*—Both Parts of this, the last Schedule, may conveniently be considered together. The Schedule as originally enacted is amended by s. 113 of and Sched. VIII to the 1947 Act, *ante*, though the amendments are of a minor character. In particular, references to the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Halsbury's Statutes 52), which became law after the passing of the 1944 Act, are incorporated in the text.

By ss. 113 and 120 of and Sched. IX, Part I, to the 1947 Act, *ante*, certain partial repeals are effected as from August 6, 1947, the date of passing of that Act. In addition, by the same sections and Sched. IX, Part II, para. 12 of this Schedule is repealed as from the appointed day (see ss. 119 and 120 of the 1947 Act, *ante*). The appointed day is July 1, 1948.

S. 39 of the 1947 Act, *ante*, provides that the expedited completion procedure of this Schedule is to be available in cases of acquisition under s. 38 of that Act, *ante*.

The present Schedule is also relevant to s. 119 (3) of the 1947 Act, *ante*, whereby words in that Act importing a reference to service of a notice to treat are to be construed as including a reference to the constructive service of such a notice which, by virtue of this Schedule or of any other enactment, is to be deemed to have been served. Similar provisions appear in the 1944 Act (see s. 65 (3) thereof, *ante*) and the present Schedule is consequently relevant also to that provision.

The procedure under the Schedule is to be by means of a purchasing order for expedited completion. By para. 1, *ante*, if an order is made it is to be registered in the local land charges register; the date of registration is to become the notional date of service of a notice to treat, and the notice is to be deemed to have been served on the persons who could have been served under s. 18 of the Lands Clauses Consolidation Act, 1845 (2 Halsbury's Statutes 1120).

The notice of confirmation of the order required by the Acquisition of Land (Authorisation Procedure) Act, 1946, is to include a notification inviting all persons entitled to claim compensation to inform the acquiring authority of their names and addresses and interests (para. 2, *ante*).

After two months from publication of the notice of confirmation (or after a shorter period, if such is specially sought in the order and approved by the Minister) the acquiring authority may make a declaration as to the whole or part of the land in the order, stating:—

- (a) That they intend to enter and take possession at the expiry of a certain period; and
- (b) That the land is to vest in the authority at the expiry of that period.

The certain period referred to in (a), *supra*, is to be a period of not less than fourteen days from the service of notices as to the effect of the declaration on every occupier of the land and every person who has provided information in answer to the invitation published in the notice of confirmation of the order. At the expiry of that period the land will vest in the acquiring authority and, subject to the liability to pay compensation, all interests, except minor tenancies and long tenancies about to expire, will be extinguished (para. 3, *ante*).

The notional notice to treat cannot, by para. 7, *ante*, be withdrawn after such vesting.

"Minor tenancies" are tenancies for a year or from year to year or a less interest. "Long tenancies about to expire" are to be for such period, longer than one year, as may be specified in the order. In the case of minor tenancies, the acquiring authority may obtain possession in accordance with s. 121 of the Lands Clauses Consolidation Act, 1845 (2 Halsbury's Statutes 1156), if possession is required before the expiration of the interest. In the case of a long tenancy about to expire, possession, if required, may be obtained after fourteen days' notice.

Para. 4, *ante*, excludes the acquisition of part of premises if notice is given between the coming into operation of the order and the making of the declaration by the acquiring authority.

For the purpose of s. 12 of the Finance Act, 1895 (16 Halsbury's Statutes 690), for the ascertainment of stamp duty there is to be substituted for the date of vesting a reference to the date on which compensation is finally ascertained (para. 5 (1), *ante*).

Where, after vesting, any document of title is retained by any person, he is to be deemed to have given to the acquiring authority an acknowledgment of the right to production of the document and to delivery of copies and an undertaking for safe custody thereof, and s. 64 of the Law of Property Act, 1925 (15 Halsbury's Statutes 241), is to have effect on the basis that the acknowledgment and undertaking did not contain any expression of contrary intention as is mentioned in that section (para. 5 (2), *ante*).

By para. 6, *ante*, cases of disputed compensation are not to be referred to arbitration after six years from the date when the claimant or his predecessor first knew or could be expected to know of the vesting.

The remaining paragraphs provide for the application of the Lands Clauses Consolidation Act, 1845 (2 Halsbury's Statutes 1113), only subject to certain savings (para. 8, *ante*); for cases of acquisition of part only of land subject to a rentcharge (para. 9, *ante*) or an unexpired lease for a term of years (para. 10, *ante*), and for the recovery of certain moneys paid by

persons in ignorance of their relief from liability by the vesting of land under the purchase order procedure of the present Schedule (para. 11, *ante*).

*Lands Clauses Acts.*—2 Halsbury's Statutes 1113 *et seq.*

*Acquisition of Land (Assessment of Compensation) Act, 1919.*—2 Halsbury's Statutes 1176. For ss. 1 and 5 (2) thereof, see 2 Halsbury's Statutes 1176, 1179.

*Lands Clauses Consolidation Act, 1845.*—2 Halsbury's Statutes 1113 *et seq.* For ss. 58 to 62, 64 to 67, 84 to 90, 92, 115 to 118, 119 and 124 to 126, see 2 Halsbury's Statutes 1132 *et seq.*, 1133 *et seq.*, 1142 *et seq.*, 1145, 1154 *et seq.*, 1155, 1157 *et seq.*

*Purchasing authority.*—This means a Minister, the Central Land Board, a local authority or any statutory undertakers purchasing under Part IV of the 1947 Act, *ante* (see s. 65 (1) of the 1944 Act, *ante*).

*Acquisition of Land (Authorisation Procedure) Act, 1946.*—39 Halsbury's Statutes 52. For Sched. II thereto, see 39 Halsbury's Statutes 66.

*Para. 4.*—The provisions of this paragraph may usefully be compared with those of para. 4 of Sched. II, Part I, to the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Halsbury's Statutes 66).

*Manufactory.*—As to the meaning of this term, see *Spackman v. Great Western Ry. Co.* (1855), 26 L. T. (O. S.) 22 (cottages used for storing goods in connection with a manufactory but separated from the latter by a road; held to be part of the manufactory); *Gibson v. Hammermith and City Ry. Co.* (1863), 2 Drew & Sm. 603 (factory not actually in work, but in a condition to be worked at any time; held to be a manufactory); *Reddin v. Metropolitan Board of Works* (1862), 4 De G. F. & J. 532 (what is protected under the statute must be *de facto* a part of existing factory); *Furniss v. Midland Ry. Co.* (1868), L. R. 6 Eq. 473 (land used for supplying water power essential to the manufactory; held to be protected); *Richards v. Swansea Improvement and Tramways Co.* (1878), 9 Ch. D. 425, C. A. (a manufactory does not involve necessarily the idea of building; a manufactory may be carried on on premises where there is no house or other building); and *Brook v. Manchester, Sheffield and Lincolnshire Ry. Co.*, [1895] 2 Ch. 571 (regard must be had, and perhaps principally, to the user at the time of the notice to treat: *per CHITTY, J.*).

*Park.*—As to the meaning of "park," see *Re Ripon (Highfield) Housing Order, 1938, White and Collins v. Minister of Health*, [1939] 2 K. B. 838; [1939] 3 All E. R. 548.

*Finance Act, 1895, s. 12.*—16 Halsbury's Statutes 690. If default is made in payment of stamp duty under this section as modified by para. 5, *ante*, the amount of the duty with interest at 5 per cent. becomes a debt due to the Crown.

*Acknowledgment and undertaking.*—Para. 5 (2) confirms the accepted practice whereby vendors holding in a fiduciary capacity give a statutory acknowledgment for production of documents of title retained but no undertaking for their safe custody.

*Law of Property Act, 1925, s. 64.*—15 Halsbury's Statutes 241. This section, which substantially re-enacts s. 9 of the Conveyancing Act, 1881, sets out the effect of acknowledgments for production and undertakings for safe custody respectively.

*Construed as one.*—Accordingly, para. 6 of the present Schedule is to be construed as if it were contained in Part I of the Limitation Act, 1939 (32 Halsbury's Statutes 223), unless there is any manifest discrepancy showing that the present paragraph has modified something to be found in that Part (*Canada Southern Ry. Co. v. International Bridge Co.* (1883), 8 App. Cas. 723, at p. 727; *Hart v. Hudson Brothers, Ltd.*, [1928] 2 K. B. 629, at p. 634; and *Phillips v. Parnaby*, [1934] 2 K. B. 299, at p. 302). Thus words defined in Part I of the 1939 Act will bear the like meaning in the present paragraph, unless it is clear from the context that their construction in the present paragraph is different.

*Limitation Act, 1939, Part I.*—32 Halsbury's Statutes 225 *et seq.* This Part of the Act, which comprises ss. 1 to 21 inclusive, relates to the periods of limitation for different classes of action. As to actions against public authorities, see s. 21 thereof (32 Halsbury's Statutes 235).

*Money had and received.*—Where one person has received the money of another under such circumstances that he is regarded in law as having received it to the use of that other, the law implies a promise on his part to make payment to the person entitled thereto, and in default the rightful owner may maintain an action for money had and received to his use (see *Moses v. Macferlan* (1760), 2 Burr. 1005, and *Sinclair v. Brougham*, [1914] A. C. 398).

## ORDERS, CIRCULARS AND MEMORANDA

### HOUSING (DECLARATION OF UNFITNESS) REGULATIONS, 1947

S. R. & O., 1947, No. 617

April 1, 1947

The Minister of Health, in exercise of the powers conferred on him by section 176 of the Housing Act, 1936, and of all other powers enabling him in that behalf, hereby makes the following regulations:—

1. These regulations may be cited as the Housing (Declaration of Unfitness) Regulations, 1947. [2760]

2. The forms set out in the schedule hereto or forms substantially to the like effect shall be the forms to be used in connection with the powers and duties of the local authority under paragraph 9 of the Fifth Schedule to the Town and Country Planning Act, 1944, in the cases to which those forms are applicable. [2761]

## SCHEDULE

### FORM No. 1

#### PERSONAL NOTICE OF THE MAKING OF A DECLARATION OF UNFITNESS ORDER

#### HOUSING ACT, 1936

#### TOWN AND COUNTRY PLANNING ACT, 1944

Owner  
Mortgagee

To <sup>(1)</sup>  
Of <sup>(2)</sup>

Notice is hereby given that the <sup>(3)</sup>  
in pursuance of their powers under Part II of the Fifth Schedule to the Town and Country Planning Act, 1944, on the                      day of                      194                      made and are about to submit to the Minister of Health for confirmation a declaration of unfitness order (hereinafter referred to as "the unfitness order") declaring that the house [houses] described in the schedule hereto, [and shown coloured pink on the map annexed to the unfitness order] is [are] unfit for human habitation and not capable at reasonable expense of being rendered fit for human habitation.

The principal grounds upon which the local authority are of opinion that the house [houses] is [are] unfit for human habitation and not capable at reasonable expense of being rendered so fit are set out in the schedule hereto.

As the house [houses] referred to in the unfitness order is [are] on land in respect of which [an order has been made under section 1 of the Town and Country Planning Act, 1944] [the local planning [highway] authority have resolved to seek authorisation for the compulsory purchase of the land under an enactment in Part I of the Town and Country Planning Act, 1944] [the Minister of                      has stated that he proposes to make an order under section [3] [4] [9] of the Town and Country Planning Act, 1944], then if the order authorising the compulsory purchase of the house [houses] is made either before or within two years after the confirmation of the unfitness order, the effect of the unfitness order will be that the compensation to be paid for the house [houses] on a compulsory purchase thereof will be assessed in like manner as if it had been land purchased compulsorily under Part III of the Housing Act, 1936, as being land comprised in a clearance area (that is to say, the compensation to be paid for the land, including any buildings thereon, will be the value at the time the valuation is made of the land as a site cleared of buildings and available for development in accordance with the requirements of the building byelaws for the time being in force in the district).

If, however, on a representation made to him the Minister of Health is satisfied after causing it to be inspected by one of his officers that, notwithstanding its sanitary defects, a house has been well maintained the Minister of Health may give directions for the making by the local authority of a payment under section 42 of the Housing Act, 1936, in respect of such house. Any such representation for such payment must be made within three months of the claimant first becoming aware that a notice to treat has been served in respect of the house.

Any objection to the unfitness order must be made in writing, stating the grounds of the objections, and be addressed to the Minister of Health, Whitehall, S.W.1, before the <sup>(4)</sup>                      day of                      194 .

If no objection is duly made by any of the persons on whom notices are required to be served, or if all objections so made are withdrawn, the Minister of Health

<sup>(1)</sup> Insert name and address of person to be served.

<sup>(2)</sup> Insert description of property.

<sup>(3)</sup> Insert name of local authority.

<sup>(4)</sup> Insert a date not less than 14 days after service of the notice.



may, if he thinks fit, confirm the unfitness order, but in any other case he shall before confirming the unfitness order consider any objection not withdrawn and shall, if either the person by whom the objection was made or the local authority so desire, afford that person and the authority an opportunity of appearing before and being heard by a person appointed by him for the purpose, and may then, if he thinks fit, confirm the unfitness order.

#### SCHEDULE

(1) Insert description of the house [houses] comprised in the unfitness order, either as set out in the unfitness order or in such other manner as may be sufficient for the purposes of identification.

(2) Insert the principal grounds upon which the local authority are of opinion that the house [houses] is [are] unfit.

#### FORM No. 2

#### FORM OF DECLARATION OF UNFITNESS ORDER

Whereas the (hereinafter called the Council) are a local authority for the purposes of Part III of the Housing Act, 1936 ;

And whereas the house [houses] set out in the schedule hereto is [are] comprised in the area of the Council ;

And whereas the house [houses] is [are] comprised in land designated by an order made under section 1 of the Town and Country Planning Act, 1944 ;

[And whereas the house [houses] is [are] comprised in land for the compulsory purchase of which the local planning [highway] authority have resolved by a resolution dated to seek authorisation under an enactment in Part I of the Town and Country Planning Act, 1944 ;]

[And whereas the house [houses] is [are] comprised in land as respects which the Minister of has stated that he proposes to make an order under section [3] [4] [9] of the Town and Country Planning Act, 1944 ;]

And whereas the said house [houses] is [are] in the opinion of the Council unfit for human habitation and not capable at reasonable expense of being rendered fit for human habitation :

Now therefore the Council hereby declare the said house [houses] to be unfit for human habitation and not capable at reasonable expense of being rendered fit for human habitation.

This order may be cited as the (Declaration of Unfitness) Order, 194 .

#### SCHEDULE

Number on map	Description and situation of house	Owner or reputed owner

Given under the seal of the this day  
of , nineteen hundred and forty- [2762]  
\* \* \* \* \*

#### EXPLANATORY NOTE

(This Note is not part of the Regulations, but is intended to indicate their general purport.)

These regulations prescribe the forms of the order and notice to be used under paragraph 9 of the Fifth Schedule to the Town and Country Planning Act, 1944. This paragraph deals with the assessment of compensation in cases where the property which is intended to be made the subject of a declaratory order under section 1, or to be acquired for the purpose of Part I of the Act,



*comprises a house that is unfit for human habitation and cannot at reasonable expense be rendered fit. In such cases a local authority under Part III of the Housing Act, 1936, may submit to the Minister of Health an order declaring such house to be unfit and incapable of being rendered fit at reasonable expense.*

*The effect of this unfitness order, when confirmed, is to reduce the amount of compensation payable in respect of the acquisition of the house under a compulsory purchase order made under Part I of the Town and Country Planning Act, 1944, either before or with two years after the confirmation of the unfitness order to that which would be payable on the basis applicable under the Housing Act, 1936, to a house in a clearance area.*

## NEW TOWNS COMPULSORY PURCHASE (CONTEMPORANEOUS PROCEDURE) REGULATIONS, 1947

S. R. & O., 1947, No. 1353

July 1, 1947

The Minister of Town and Country Planning (hereinafter called "the Minister") in exercise of the powers conferred upon him by paragraph 6 of the Second Schedule to the Town and Country Planning Act, 1944, as applied by the New Towns Act, 1946 (hereinafter called "the Act"), and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

1. These Regulations may be cited as the New Towns Compulsory Purchase (Contemporaneous Procedure) Regulations, 1947, and shall come into force on the date hereof. [2763]

2.—(1) Any reference in these Regulations to the Town and Country Planning Act, 1944, shall be to that Act as modified and applied by the Act.

(2) The Interpretation Act, 1889, shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament. [2764]

3. Where the Minister has published in accordance with the First Schedule to the Act a draft of an Order which he proposes to make under Section 1 of the Act designating an area as the site of a new town (hereinafter called "the Designation Order") and the Designation Order has not been made a local highway authority may, pending the making of the Designation Order take such proceedings under paragraphs 1 to 3 of the Second Schedule to the Town and Country Planning Act, 1944, as are required to be taken by that authority in respect of the making of a Compulsory Purchase Order in respect of land in the said area. [2765]

4. Any proceedings which may be taken by a local highway authority by virtue of the powers contained in Article 3 of these Regulations shall, for the purposes of the Second Schedule to the Town and Country Planning Act, 1944, be deemed to be proceedings taken after the date on which the Minister makes the Designation Order. [2766]

\* \* \* \* \*

### EXPLANATORY NOTE

*(This Note is not part of the Regulations, but is intended to indicate their general purport.)*

*The purpose of these Regulations, which are made under paragraph 6 of the Second Schedule to the Town and Country Planning Act, 1944, as applied by the New Towns Act, 1946, is to make provision whereby certain preliminary steps in the procedure laid down for the compulsory purchase of land in an*

*area designated as the site of a new town may be taken by a Local Highway Authority before the area has actually been designated by an order under Section 1 of the New Towns Act, 1946, but after the draft of such an order has been published in accordance with the provisions of the First Schedule to that Act.*

## NEW TOWNS (PARTICULARS AND FORMS OF ORDERS AND NOTICES) REGULATIONS, 1947

*S. R. & O., 1947, No. 1354*

*July 1, 1947*

The Minister of Town and Country Planning in exercise of the powers conferred upon him by Section 19 of the New Towns Act, 1946 (hereinafter called "the Act") and Section 63 of the Town and Country Planning Act, 1944, and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

1. These Regulations may be cited as the New Towns (Particulars and Forms of Orders and Notices) Regulations, 1947, and shall come into force on the date hereof. [2767]

2.—(1) Any reference in these Regulations to a map shall be to a map of a scale of not less than 25 inches to the mile.

(2) Any reference in these Regulations to the Town and Country Planning Act, 1944, shall be to that Act as modified and applied by the Act.

(3) The Interpretation Act, 1889, shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament. [2768]

3. The particulars of the interest of an owner or occupier for the purposes of paragraph 5 of Part I of the Second Schedule to the Town and Country Planning Act, 1944, shall be the name and postal address of the owner or occupier, a statement of the nature of the interest of the owner or occupier, and particulars sufficient to enable the development corporation or local highway authority to identify the extent and boundaries of the land. [2769]

4. Any notice or other document to be served on an owner or occupier in the manner provided by paragraph (ii) of the Proviso to Section 54 of the Town and Country Planning Act, 1944, shall at the beginning of such notice or document have clearly and legibly inscribed upon it in the following form the words:—

**IMPORTANT**—This communication affects

**YOUR PROPERTY**

and where the notice or document is sent under cover otherwise than in a prepaid registered letter the cover shall in addition be endorsed in like manner. [2770]

5. The form of information for the purposes of paragraph 2 of the Sixth Schedule to the Town and Country Planning Act, 1944, shall be:

- (a) the name and postal address of the person entitled to claim compensation;
- (b) particulars sufficient to enable the development corporation or local highway authority to identify the extent and boundaries of the land;
- (c) a statement of the nature of—
  - (i) the interest in the land of the person entitled to claim compensation;
  - (ii) any leases, tenancies, mortgages, covenants and incumbrances in respect of the land; and
  - (iii) the war damage, if any, sustained by the land. [2771]

6. The forms set out in the Schedule hereto, or forms substantially to the like effect, shall be the forms to be used in connection with the powers and duties of the development corporation or local highway authority under the Act in all cases to which those forms are applicable. [2772]

### THE SCHEDULE

GENERAL NOTE.—It is desirable that the address of the offices of the Corporation or Authority to which communications are to be sent should be appended to all personal notices and advertisements in which such communications are invited to be made.

#### FORM No. 1

#### FORM OF REPRESENTATION BY A STATUTORY UNDERTAKER WITH REFERENCE TO A DESIGNATION ORDER

#### NEW TOWNS ACT, 1946

(Title of Draft Order)

To the Minister of <sup>(1)</sup>

The <sup>(2)</sup>, being a person carrying on a statutory undertaking, hereby make a representation in accordance with the provisions of subsection (5) of Section 13 of the Town and Country Planning Act, 1944, as applied by the New Towns Act, 1946, that the land situate at

and included in the Draft <sup>(3)</sup> (Designation) Order, 19 , particulars of which land are set out in the Schedule hereto, is land to which the said Section 13 applies.

#### SCHEDULE

Nature of the undertaking and Statute from which it derives its powers	Quantity, description and situation of the land	Interest of the undertaker in the land	Purpose for which land is held by undertaker and present use if different therefrom

Dated the                      day of                      , 19 .

Signed on behalf of the undertaker.

#### DIRECTIONS FOR FILLING UP THIS FORM

- (<sup>1</sup>) Insert name of appropriate Minister.
- (<sup>2</sup>) Insert name and address of the Statutory Undertaker.
- (<sup>3</sup>) Insert title of Draft Designation Order,

#### FORM No. 2

#### FORM OF COMPULSORY PURCHASE ORDER MADE FOR THE PURPOSES OF THE NEW TOWNS ACT, 1946

#### NEW TOWNS ACT, 1946

(Title of Order)

The <sup>(1)</sup> (in this Order referred to as ["the Corporation"] ["the Authority"]) hereby makes the following Order :—

1. Subject to the provisions of this Order the [Corporation] [Authority] are hereby authorised to purchase compulsorily for the purposes of <sup>(2)</sup> the lands described in the Schedule hereto, which lands are shown

edged and coloured blue on a map marked (3) and sealed with the seal of the [Corporation] [Authority] and annexed hereto.

2. (4) Section seventy-seven and Sections seventy-eight to eighty-five of the Railways Clauses Consolidation Act, 1845, as originally enacted, and not as amended for certain purposes by Section fifteen of the Mines (Working Facilities and Support) Act, 1923, are hereby incorporated with this Order and the provisions of that Act as originally enacted shall apply accordingly.

### SCHEDULE

Number on the map	Quantity, description and situation of the lands

Given under the seal of the (1)

the day of

, 19 .

Signature of duly authorised officer.

### DIRECTIONS FOR FILLING UP THIS FORM

(1) Insert name of Corporation or Authority making the Order.

(2) Insert statement of purpose.

(3) Insert heading of map. The map should be identified by a heading in terms of the title of the Order.

(4) The application of Sections 77 and 78 to 85 to all or any of the land is optional. The paragraph should be deleted or adapted as may be necessary.

### FORM No. 3

#### FORM OF ADVERTISEMENT AND PERSONAL NOTICE OF SUBMISSION OF A COMPULSORY PURCHASE ORDER FOR CONFIRMATION

### NEW TOWNS ACT, 1946

(Title of Order)

To : (1)

of (1)

Notice is hereby given that the (2) in pursuance of their powers under Section (3) of the New Towns Act, 1946, [and Section 3 of the Town and Country Planning Act, 1944.] (4) on the day of , 19 , made an Order which has been submitted for confirmation by the Minister of Town and Country Planning authorising them to purchase compulsorily for the purposes of (5) the lands described in the Schedule hereto.

A copy of the Order, and of the map referred to therein, have been deposited at and will be open for inspection without payment of fee between the hours of .

Any objection to the Order must be made in writing, stating the grounds of the objection, and addressed to the Minister of Town and Country Planning, 32, St. James's Square, London, S.W.1, before the (6) day of , 19 .

The Minister is not, in all cases, required to arrange for objections to be heard by a person appointed by him for that purpose. It is important, therefore, that an objection should include a full statement in writing of the grounds on which the objection is made as the objector may have no further opportunity to make such a statement.

Any owner or occupier of any land to which the Order relates may send to the (2) at the address below, a request in writing to serve him

with a notice that the Order has been confirmed, and naming a place where a copy of the Order and of the map and of any descriptive matter annexed thereto, may be seen. Such request should contain a statement of the name, postal address and the interest in the land of the owner or occupier, and particulars sufficient to enable the extent and boundaries of the land to be identified.

### SCHEDULE

(Here insert description of the lands comprised in the Order)

Dated the                      day of                      , 19 .

Signature of duly authorised officer.

### DIRECTIONS FOR FILLING UP THIS FORM

(<sup>1</sup>) Delete for purpose of advertisement. For use as a personal notice, insert the name and address of the person on whom the notice is to be served.

(<sup>2</sup>) Insert name of Corporation or Authority making the Compulsory Purchase Order.

(<sup>3</sup>) Insert section of the Act under which the Compulsory Purchase Order is made.

(<sup>4</sup>) The words in square brackets should be inserted if the Compulsory Purchase Order is made under Section 7 of the Act.

(<sup>5</sup>) Insert statement of purpose as set out in the Compulsory Purchase Order.

(<sup>6</sup>) Insert a date not less than 28 days from the first date of local advertisement.

### FORM No. 4

### FORM OF ADVERTISEMENT AND PERSONAL NOTICE OF CONFIRMATION OF A COMPULSORY PURCHASE ORDER

### NEW TOWNS ACT, 1946

(Title of Order)

To : (<sup>1</sup>)

of (<sup>1</sup>)

Notice is hereby given that the Minister of Town and Country Planning in pursuance of the powers vested in him by Section (<sup>2</sup>) of the New Towns Act, 1946, [and Section 3 of the Town and Country Planning Act, 1944] (<sup>3</sup>) on the                      day of                      19 , confirmed [with modifications] (<sup>4</sup>) an Order submitted to him by the (<sup>5</sup>)                      authorising the [Corporation] [Council] to purchase compulsorily for the purposes of (<sup>6</sup>)                      the lands described in the Schedule hereto.

A copy of the confirmed Order, and of the map referred to therein, has been deposited at                      and will be open for inspection without payment of fee between the hours of                      .

### SCHEDULE

(Here insert description of the lands comprised in the Order)

Dated the                      day of                      , 19 .

Signature of duly authorised officer.

### DIRECTIONS FOR FILLING UP THIS FORM

(<sup>1</sup>) Delete for purpose of advertisement. For use as a personal notice, insert the name and address of the person on whom the notice is to be served.

(<sup>2</sup>) Insert section of the Act under which the Compulsory Purchase Order is made.

(<sup>3</sup>) The words in square brackets, should be inserted if the Compulsory Purchase Order is made under Section 7 of the Act.

(<sup>4</sup>) Strike out words in square brackets if inapplicable.

(<sup>5</sup>) Insert name of Corporation or Authority making the Compulsory Purchase Order.

(<sup>6</sup>) Insert statement of purpose as set out in the Compulsory Purchase Order.

## FORM No. 5

FORM OF COMPULSORY PURCHASE ORDER MADE FOR THE PURPOSES OF THE NEW TOWNS ACT, 1946, WHERE EXPEDITED COMPLETION OF PURCHASE IS APPLIED

## NEW TOWNS ACT, 1946

*(Title of Order)*

The <sup>(1)</sup>  
(in this Order referred to as ["the Corporation"] ["the Authority"]) hereby makes the following Order :—

1. Subject to the provisions of this Order, the [Corporation] [Authority] are hereby authorised to purchase compulsorily for the purposes of <sup>(2)</sup>

the lands described in the Schedule hereto, which lands are shown edged and coloured blue on a map marked <sup>(3)</sup>  
and sealed with the seal of the [Corporation] [Authority] and annexed hereto.

2. <sup>(4)</sup> Section seventy-seven and Sections seventy-eight to eighty-five of the Railway Clauses Consolidation Act, 1845, as originally enacted, and not as amended for certain purposes by Section fifteen of the Mines (Working Facilities and Support) Act, 1923, are hereby incorporated in this Order, and the provisions of that Act as originally enacted shall apply accordingly.

3. The provisions of the Sixth Schedule to the Town and Country Planning Act, 1944, as applied by the New Towns Act, 1946, providing for expedited completion of purchase shall apply to this Order as respects the land to which this Order relates.

4. <sup>(5)</sup> For the purposes of paragraph 1 of the said Sixth Schedule the period for which a tenancy in the said lands is still to run shall be a period expiring on the day of , 19 .

5. <sup>(6)</sup> The earliest time at which a Declaration may be executed by the [Corporation] [Authority] for the purposes of paragraph 3 of the said Sixth Schedule shall be the expiration of <sup>(7)</sup>  
from the date of first publication of the notice of confirmation of this Order.

## SCHEDULE

Number on the map	Quantity, description and situation of the lands

Given under the seal of the <sup>(1)</sup>

the day of

, 19 .

Signature of duly authorised officer.

## DIRECTIONS FOR FILLING UP THIS FORM

<sup>(1)</sup> Insert name of Corporation or Authority making the Order.

<sup>(2)</sup> Insert statement of purpose.

<sup>(3)</sup> Insert heading of the map. The map should be identified by a heading in terms of the title of the Order.

<sup>(4)</sup> The application of Sections 77, and 78 to 85 to all or any of the land is optional. The paragraph should be deleted or adapted as may be necessary.

<sup>(5)</sup> Strike out this paragraph where not required. The paragraph should only be inserted where it is intended to define the "long tenancy" by reference to a period fixed by the Corporation or Authority. Where different periods are proposed to be fixed as respects different tenancies the paragraph should be adapted to provide accordingly.

<sup>(6)</sup> Strike out this paragraph where not required. The paragraph must be

inserted where it is desired to take advantage of the proviso to paragraph 3 (2) of the 6th Schedule to the Town and Country Planning Act, 1944.

(7) If it is desired to make the Declaration in respect of a portion only of the land to which the Order relates, or to make a Declaration fixing different times for different portions of the land, a plan showing the portion or portions of the land in a different colour or colours should be attached as part of the Order, and the paragraph should be adapted accordingly to provide for inclusion of a reference to such plan.

#### FORM No. 6

#### FORM OF ADVERTISEMENT AND PERSONAL NOTICE OF SUBMISSION FOR CONFIRMATION OF A COMPULSORY PURCHASE ORDER APPLYING EXPEDITED COMPLETION OF PURCHASE

#### NEW TOWNS ACT, 1946

(Title of Order)

To : (1)

of (1)

Notice is hereby given that the (2)  
in pursuance of their powers under Section (3) of  
the New Towns Act, 1946, [and Section 3 of the Town and Country Planning Act, 1944,] (4) on the day of , 19 , made an Order, which has been submitted for confirmation by the Minister of Town and Country Planning, authorising them to purchase compulsorily for the purposes of (5)

the lands described in the Schedule hereto, and directing that the provisions of the Town and Country Planning Act, 1944, as applied by the New Towns Act, 1946, relating to expedited completion of purchase shall apply thereto.

A copy of the Order, and of the map referred to therein, have been deposited at

and will be

open for inspection without payment of fee between the hours of

Where the Minister confirms the Order, he may, if he is satisfied that it is requisite so to do, confirm the Order with a Direction that the provisions of the Town and Country Planning Act, 1944, as applied by the New Towns Act, 1946, relating to expedited completion of purchase shall apply to the said land.

Where the confirmed Order contains such a Direction the following provisions will operate :—

- (a) The Lands Clauses Acts and the Acquisition of Land (Assessment of Compensation) Act, 1919, as amended and applied by the Town and Country Planning Act, 1944, will have effect as if a notice to treat such as is mentioned in Section 18 of the Lands Clauses Consolidation Act, 1845, had been served on every person on whom the [Corporation] [Council] could, under the terms of that Section, have served such a notice, namely, all persons interested in the said lands ; all persons enabled by the Land Clauses Acts to sell and convey or release any of the said lands ; or such of the above persons as would after diligent enquiry be known to the [Corporation] [Council], and the date on which such notice to treat will be deemed to have been served will be the date on which the Order is registered in the Register of Local Land Charges kept in respect of the area in which the lands are situated. Such notice to treat will not be deemed to have been served on any person in respect of an interest which is a tenancy for a year, or from year to year, or a less interest, [or a tenancy having still to run only a period expiring on the day of :] (6).

- (b) The (2) may, at any time after the expiration of (7) from the date of first publication of the notice of confirmation of the Order and subject to the said tenancies, execute a Declaration :

(i) of their intention to enter on the whole or part of the lands to which the Order relates and take possession thereof at the expiration of a period specified in such declaration, not being less than fourteen days from the completion of the service of a notice to that effect on occupiers, and on persons entitled to claim compensation who have given information to the [Corporation] [Council] of the nature of the



land in respect of which they are entitled to claim compensation and of their interest therein, and

(ii) that the lands will vest in the [Corporation] [Council] at the expiration of the period specified in such declaration.

Any objection to the Order must be made in writing stating the grounds of the objection, and addressed to the Minister of Town and Country Planning, 32, St. James's Square, London, S.W.1, before the <sup>(8)</sup> day of 19 .

The Minister is not, in all cases, required to arrange for objections to be heard by a person appointed by him for that purpose. It is important, therefore, that an objection should include a full statement in writing of the grounds on which the objection is made as the objector may have no further opportunity to make such a statement.

Any owner or occupier of any land to which the Order relates may send to the <sup>(2)</sup> at the address below, a request in writing to serve him with a notice that the Order has been confirmed, and naming a place where a copy of the Order and of the map and of any descriptive matter annexed thereto, may be seen. Such request should contain a statement of the name, postal address, and the interest in the land of the owner or occupier, and particulars sufficient to enable the extent and boundaries of the land to be identified.

### SCHEDULE

(Here insert description of the lands comprised in the Order)

Dated this day of 19 .

Signature of duly authorised officer.

### DIRECTIONS FOR FILLING UP THIS FORM

(1) Delete for purpose of advertisement. For use as a personal notice insert name and address of the person on whom the notice is to be served.

(2) Insert name of Corporation or Authority making the Compulsory Purchase Order.

(3) Insert section of the Act under which the Compulsory Purchase Order is made.

(4) The words in square brackets should be inserted if the Compulsory Purchase Order is made under Section 7 of the Act.

(5) Insert statement of purpose as set out in the Compulsory Purchase Order.

(6) Strike out words in square brackets if inapplicable. The words should be inserted only where the Compulsory Purchase Order provides for a specific date for the determination of the "long tenancy" and if different periods are fixed as respects different tenancies the paragraph should be amended accordingly.

(7) The words "two months" should be here inserted unless it is proposed that a longer or shorter period should be substituted. Where provision is made for fixing different times for different portions of the land, the paragraph should be amended accordingly.

(8) Insert a date not less than 28 days from the first date of local advertisement.

### FORM No. 7

FORM OF ADVERTISEMENT AND PERSONAL NOTICE OF CONFIRMATION OF A  
COMPULSORY PURCHASE ORDER APPLYING EXPEDITED COMPLETION OF  
PURCHASE

NEW TOWNS ACT, 1946

(Title of Order)

To : <sup>(1)</sup>

of <sup>(1)</sup>

Notice is hereby given that the Minister of Town and Country Planning in pursuance of the powers vested in him by Section <sup>(2)</sup> of the New Towns Act, 1946, [and Section 3 of the Town and Country Planning Act, 1944] <sup>(3)</sup> on the

day of \_\_\_\_\_, 19\_\_\_\_, confirmed [with modifications] <sup>(4)</sup> an Order submitted to him by the <sup>(5)</sup>

authorising the [Corporation] [Council] to purchase compulsorily for the purposes of <sup>(6)</sup>

the lands described in the Schedule hereto.

The Order contains a Direction that the provisions of the Town and Country Planning Act, 1944, as applied by the New Towns Act, 1946, relating to expedited completion of purchase shall apply to the said lands, and the effect of the application of such provisions is—

- (a) the <sup>(5)</sup> \_\_\_\_\_ have power on or after the <sup>(7)</sup> \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, to execute a Declaration—

(i) of their intention to enter on the whole or any part of the said lands to which the Order relates and take possession thereof at the expiration of a period specified on such Declaration, not being less than fourteen days from the completion of the service of the notice to that effect on occupiers and on persons entitled to claim compensation who have given information to the [Corporation] [Council] of the nature of the land in respect of which they are entitled to claim compensation and of their interest therein; and

(ii) that the lands will vest in the [Corporation] [Council] at the expiration of the period specified in such Declaration.

- (b) At the expiration of the period specified in such Declaration, the right to enter and take possession of the lands to which the Declaration relates will vest in the [Corporation] [Council] without the previous consent of the owners or occupiers of the lands, or without compliance with the provisions of Sections eighty-four to ninety of the Lands Clauses Consolidation Act, 1845; and the lands will vest in the [Corporation] [Council] as if the [Corporation] [Council] were under that Act promoters of an undertaking having powers to execute a Deed Poll for vesting in them the lands, or any estate or interest in the lands, or for the extinguishment of any service, rentcharge, chief or other rent, payment or incumbrance. Such right of entry and vesting of the land are subject to the following restrictions :—

(i) In the case of a tenancy for a year, or from year to year, or any less interest, the right of entry is not exercisable, and the vesting of the lands in the [Corporation] [Council] is subject to any such tenancy during its subsistence without prejudice to the powers of the [Corporation] [Council] under the Lands Clauses Act to require a tenant to give up possession.

<sup>(8)</sup> (ii) In the case of a tenancy having still to run only a period expiring on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the right of entry is not exercisable until the [Corporation] [Council] have served a notice to treat in respect of the tenancy, and have thereafter served a notice on every occupier of the lands in which the tenancy subsists, describing the lands to which the notice relates and stating their intention to enter on and take possession thereof at the expiration of a period (specified in the notice and not being less than fourteen days) from the date on which the notice is served, and the vesting of the lands in the [Corporation] [Council] is subject to the tenancy until the expiration of such period or the cesser of the tenancy, whichever first occurs.

A copy of the confirmed Order, and of the map referred to therein, has been deposited at \_\_\_\_\_ and will be open for inspection without payment of fee between the hours of \_\_\_\_\_

Any person entitled to claim compensation in respect of any of the land to which this Order relates may send to the [Corporation] [Council] his name and postal address; particulars sufficient to enable the [Corporation] [Council] to identify the extent and boundaries of the land; and a statement of the nature of his interest in the land, of any leases, tenancies, mortgages, covenants and incumbrances in respect of the land and of any war damage sustained by the land <sup>(9)</sup>.

## SCHEDULE

(Here insert description of the lands comprised in the Order)

Dated the                      day of                      , 19 .

Signature of duly authorised officer.

## DIRECTIONS FOR FILLING UP THIS FORM

(<sup>1</sup>) Delete for purpose of advertisement. For use as a personal notice insert name and address of the person on whom the notice is to be served.

(<sup>2</sup>) Insert Section of the Act under which the Compulsory Purchase Order is made.

(<sup>3</sup>) The words in square brackets should be inserted if the Compulsory Purchase Order is made under Section 7 of the Act.

(<sup>4</sup>) Strike out words in square brackets if inapplicable.

(<sup>5</sup>) Insert name of Corporation or Authority making the Compulsory Purchase Order.

(<sup>6</sup>) Insert statement of purpose as set out in the Compulsory Purchase Order.

(<sup>7</sup>) Insert a date not less than two months from the date of the first publication of notice of confirmation of Order or such earlier or later date as may be provided for by the Order.

(<sup>8</sup>) Strike out this sub-paragraph if inapplicable. If applicable insert a date as fixed by the Compulsory Purchase Order.

(<sup>9</sup>) Where the Corporation or Authority provide a form for the submission of this information, a paragraph should be added to the effect that a form for the purpose may be had on application at the offices of the Corporation or Council.

## FORM NO. 8

FORM OF REPRESENTATION BY A STATUTORY UNDERTAKER WITH REFERENCE  
TO A COMPULSORY PURCHASE ORDER

## NEW TOWNS ACT, 1946

*(Title of Order)*To the Minister of (<sup>1</sup>)The (<sup>2</sup>)

being a person carry on a Statutory Undertaking, hereby make a representation in accordance with the provisions of subsection (3) of Section 13 of the Town and Country Planning Act, 1944, as applied by the New Towns Act, 1946, that the land situate at

particulars of which are set out in the Schedule hereto, is land to which the said Section 13 applies, and hereby request that such land should be excluded from the Order submitted to the Minister of Town and Country Planning by the (<sup>3</sup>)

on the                      day of                      , 19 ,  
authorising the compulsory purchase of the said land for the purposes of (<sup>4</sup>)

## SCHEDULE

Nature of the undertaking and Statute from which it derives its powers	Quantity, description and situation of the land	Interest of the undertaker in the land	Purpose for which the land is held by undertaker and present use if different therefrom

Dated the                      day of                      , 19 .

Signed on behalf of the Undertaker.

## DIRECTIONS FOR FILLING UP THIS FORM

- (<sup>1</sup>) Insert name of appropriate Minister.
- (<sup>2</sup>) Insert name and address of the Statutory Undertaker.
- (<sup>3</sup>) Insert name of Corporation or Authority submitting the Compulsory Purchase Order.
- (<sup>4</sup>) Insert statement of purpose as set out in the advertisement or notice of submission of the Compulsory Purchase Order.

## FORM No. 9

FORM OF APPLICATION FOR A COMPULSORY PURCHASE ORDER FOR LAND  
HELD FOR THE CARRYING ON OF A STATUTORY UNDERTAKING

## NEW TOWNS ACT, 1946

The (<sup>1</sup>) hereby make an application to the Minister of Town and Country Planning and the Minister of (<sup>2</sup>) for an Order to be made by the said Ministers authorising the [Corporation] [Council] to purchase compulsorily for the purposes of (<sup>3</sup>) the lands situate at and (<sup>4</sup>) by the (<sup>5</sup>) for the purposes of carrying on their undertaking, being lands to which the provisions of subsection (1) of Section 13 of the Town and Country Planning Act, 1944, as applied by the New Towns Act, 1946, relate, which lands are shown edged and coloured blue on a map marked (<sup>6</sup>) and sealed with the seal of the [Corporation] [Council] and annexed hereto.

Dated the                      day of                      , 19   .

Signature of duly authorised officer.

## DIRECTIONS FOR FILLING UP THIS FORM

- (<sup>1</sup>) Insert name of Corporation or Authority making the application.
- (<sup>2</sup>) Insert name of appropriate Minister.
- (<sup>3</sup>) Insert statement of purpose.
- (<sup>4</sup>) Insert the word "used" or the words "in which an interest is held," as the case may be.
- (<sup>5</sup>) Insert name and address of the Statutory Undertaker.
- (<sup>6</sup>) Insert heading of map. The map should be identified by an appropriate heading.

## FORM No. 10

FORM OF PERSONAL NOTICE OF APPLICATION FOR A COMPULSORY PURCHASE ORDER  
FOR LAND HELD FOR THE CARRYING ON OF A STATUTORY UNDERTAKING

## NEW TOWNS ACT, 1946

To (<sup>1</sup>)  
of (<sup>1</sup>)

Notice is hereby given that the (<sup>2</sup>) in pursuance of their powers under Section 13 of the Town and Country Planning Act, 1944, as applied by the New Towns Act, 1946, on the day of                      , 19   , have applied to the Minister of Town and Country Planning and to the Minister (<sup>3</sup>) for an Order to be made by those Ministers authorising the [Corporation] [Council] to purchase compulsorily for the purposes of (<sup>4</sup>) the lands described in the Schedule hereto and (<sup>5</sup>) by the (<sup>6</sup>) for the purposes of carrying on their undertaking, being lands to which the provisions of subsection (1) of the said Section 13 relate and that the application is about to be considered by those Ministers.

A copy of the application, and of the map referred to therein, have been deposited at                      and will be open for inspection without payment of fee between the hours of

grounds of the objection, and addressed to the Minister of Town and Country Planning, 32, St. James's Square, London, S.W.1, before the (?) day of , 19 .

### SCHEDULE

(Here insert description of the lands comprised in the Application)

Dated the                      day of                      , 19 .

Signature of duly authorised officer.

### DIRECTIONS FOR FILLING UP THIS FORM

- (1) Insert name and address of person on whom the notice is required to be served.
- (2) Insert name of Corporation or Authority making the application.
- (3) Insert name of appropriate Minister.
- (4) Insert statement of purpose as set out in the Application.
- (5) Insert the word "used" or the words "in which an interest is held," as the case may be.
- (6) Insert name and address of Statutory Undertaker.
- (7) Insert a date not less than 28 days from the service of the notice.

### FORM No. 11

FORM OF PERSONAL NOTICE OF THE MAKING OF A COMPULSORY PURCHASE ORDER FOR LAND HELD FOR THE CARRYING ON OF A STATUTORY UNDERTAKING

### NEW TOWNS ACT, 1946

(Title of Order)

To : (1)  
of (1)

Notice is hereby given that the Minister of Town and Country Planning and the Minister of (2)

in pursuance of the powers vested in them by Section 13 of the Town and Country Planning Act, 1944, as applied by the New Towns Act, 1946, on the day of 19 , made [with modifications] (3) an Order in

accordance with an application submitted to them by the (4) authorising the [Corporation] [Council] to purchase compulsorily for the purposes of (5) the lands described in the Schedule hereto.

A copy of the Order, and of the map referred to therein, have been deposited at                      and will be open for inspection without payment of fee between the hours of

### SCHEDULE

(Here insert description of the lands comprised in the Order)

Dated the                      day of                      , 19 .

Signature of duly authorised officer.

### DIRECTIONS FOR FILLING UP THIS FORM

- (1) Name and address of person on whom the notice is required to be served.
- (2) Insert name of appropriate Minister.
- (3) Strike out where inapplicable.
- (4) Insert name of Corporation or Authority making the application.
- (5) Insert statement of purpose as set out in the Compulsory Purchase Order.

### FORM No. 12

FORM OF APPLICATION FOR A COMPULSORY PURCHASE ORDER FOR LAND HELD FOR THE CARRYING ON OF A STATUTORY UNDERTAKING AND FOR EXPEDITED COMPLETION OF PURCHASE

### NEW TOWNS ACT, 1946

The (1)                      hereby make an application to the Minister of Town and Country Planning and the Minister of (2) for an Order

to be made by those Ministers authorising the [Corporation] [Council] to purchase compulsorily for the purposes of (3) the lands situate at \_\_\_\_\_ by the (5) for the purposes of carrying on their undertaking, being lands to which the provisions of subsection (1) of Section 13 of the Town and Country Planning Act, 1944, as applied by the New Towns Act, 1946, relate, which lands are shown edged and coloured blue on a map marked (6) \_\_\_\_\_ and sealed with the seal of the [Corporation] [Council] and annexed hereto.

The (1) \_\_\_\_\_ make a further application to the Minister of Town and Country Planning and the Minister of (2) \_\_\_\_\_

that the said Order shall include a Direction that the provisions of the Sixth Schedule to the Town and Country Planning Act, 1944, as applied by the New Towns Act, 1946, relating to expedited completion of purchase shall apply to the said Order as respects the lands to which the Order relates.

(7) For the purposes of paragraph 1 of the said Sixth Schedule the period for which a tenancy in the said lands is still to run shall be a period expiring on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

(8) The earliest time at which a Declaration may be executed by the [Corporation] [Authority] for the purposes of paragraph 3 of the said Sixth Schedule shall be the expiration of (9) \_\_\_\_\_ from the date of first publication of notice of confirmation of the said Order.

Dated the \_\_\_\_\_

day of \_\_\_\_\_

, 19 \_\_\_\_\_

Signature of duly authorised officer.

#### DIRECTIONS FOR FILLING UP THIS FORM

- (1) Insert name of Corporation or Authority making the application.
- (2) Insert name of appropriate Minister.
- (3) Insert statement of purpose.
- (4) Insert the word "used" or the words "in which an interest is held," as the case may be.
- (5) Insert name and address of the Statutory Undertaker.
- (6) Insert heading of map. The map should be identified by an appropriate heading.
- (7) Strike out this paragraph where not required. The paragraph should only be inserted where it is intended to define the "long tenancy" by reference to a period fixed by the Corporation or Authority. Where different periods are proposed to be fixed as respects different tenancies the paragraph should be adapted to provide accordingly.
- (8) Strike out this paragraph where not required. The paragraph must be inserted where it is desired to take advantage of the proviso to paragraph 3 (2) of the 6th Schedule to the Town and Country Planning Act, 1944, as applied by the Act.
- (9) If it is desired to make a Declaration in respect of a portion only of the land to which the Order is to relate, or to make a Declaration fixing different times for different portions of the land, a plan showing the portion or portions of the land in a different colour or colours should accompany the application, and the paragraph should be adapted accordingly to provide for inclusion of a reference to such plan.

#### FORM No. 13

FORM OF PERSONAL NOTICE OF APPLICATION FOR A COMPULSORY PURCHASE ORDER FOR LAND HELD FOR THE CARRYING ON OF A STATUTORY UNDERTAKING AND FOR EXPEDITED COMPLETION OF PURCHASE

#### NEW TOWNS ACT, 1946

To (1) \_\_\_\_\_

of (1) \_\_\_\_\_

Notice is hereby given that the (2) \_\_\_\_\_ in pursuance of their powers under Section 13 of the Town and Country Planning Act, 1944, as applied by the New Towns Act, 1946, on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, have applied to the Minister of Town and Country

Planning and to the Minister of <sup>(3)</sup> for an Order to be made by those Ministers authorising the [Corporation] [Council] to purchase compulsorily for the purpose of <sup>(4)</sup> the lands described in the Schedule hereto and <sup>(5)</sup> by the <sup>(6)</sup>

for the purposes of carrying on their undertaking, being lands to which the provisions of sub-section (1) of Section 13 of the Town and Country Planning Act, 1944, as applied by the New Towns Act, 1946, relate, and directing that the provisions of the said Act relating to expedited completion of purchase shall apply thereto; and that the application is about to be considered by those Ministers.

A copy of the said application, and of the map referred to therein, have been deposited at and will be open for inspection without payment of fee between the hours of

Where the said Ministers make the Order, they may include therein a Direction that the said provisions relating to expedited completion of purchase shall apply to the said lands.

Where the Order so made contains such a Direction, the following provisions will operate :—

(a) The Lands Clauses Acts and the Acquisition of Land (Assessment of Compensation) Act, 1919, as amended and applied by the Town and Country Planning Act, 1944, will have effect as if a notice to treat such as is mentioned in Section 18 of the Lands Clauses Consolidation Act, 1845, had been served on every person on whom the [Corporation] [Council] could, under the terms of that section, have served such a notice, namely, all persons interested in the said lands; all persons enabled by the Lands Clauses Acts to sell and convey or release any of the said lands; or such of the above persons as would after diligent enquiry be known to the [Corporation] [Council], and the date on which such notice to treat will be deemed to have been served will be the date on which the Order is registered in the Register of Local Land Charges kept in respect of the area in which the lands are situated. Such notice to treat will not be deemed to have been served on any persons in respect of an interest which is a tenancy for a year, or from year to year, or a less interest, [or a tenancy having still to run only a period expiring on the day of ;] <sup>(7)</sup>

(b) the <sup>(2)</sup> may, at any time after the expiration of <sup>(8)</sup> from the date of first publication of the notice of the making of the Order, and subject to the said tenancies, execute a Declaration—

(i) of their intention to enter on the whole or part of the lands to which the Order relates and take possession thereof at the expiration of a period specified in such declaration not being less than 14 days from the completion of the service of a notice to that effect on occupiers and on persons entitled to claim compensation who have given information to the [Corporation] [Council] of the nature of the land in respect of which they are entitled to claim compensation and of their interest therein; and

(ii) that the lands will vest in the [Corporation] [Council] at the expiration of the period specified in such declaration.

Any objection to the making of the Order must be made in writing stating the grounds of the objection, and addressed to the Minister of Town and Country Planning, 32, St. James's Square, London, S.W.1, before the <sup>(9)</sup> day of , 19 .

#### SCHEDULE

(Here insert description of the lands comprised in the Application)

Dated the day of , 19 .

#### DIRECTIONS FOR FILLING UP THIS FORM

(1) Insert name and address of person on whom the notice is required to be served.

(2) Insert name of Corporation or Authority making the application.



- (<sup>3</sup>) Insert name of appropriate Minister.
- (<sup>4</sup>) Insert statement of purpose as set out in the Application.
- (<sup>5</sup>) Insert the word "used" or the words "in which an interest is held," as the case may be.
- (<sup>6</sup>) Insert name and address of Statutory Undertaker.
- (<sup>7</sup>) Strike out words in square brackets if inapplicable. The words should be inserted only where the application provides for a specific date for the determination of the "long tenancy," and if different periods are fixed as respects different tenancies, the paragraph should be amended accordingly.
- (<sup>8</sup>) The words "two months" should be here inserted unless it is proposed that a longer or shorter period should be substituted. Where provision is made for fixing different times for different portions of the land, the paragraph should be amended accordingly.
- (<sup>9</sup>) Insert a date not less than 28 days from the date of the service of the notice.

## FORM No. 14

FORM OF PERSONAL NOTICE OF THE MAKING OF A COMPULSORY PURCHASE ORDER  
FOR LAND HELD FOR THE CARRYING ON OF A STATUTORY UNDERTAKING,  
APPLYING EXPEDITED COMPLETION OF PURCHASE

## NEW TOWNS ACT, 1946

*(Title of Order)*

To (<sup>1</sup>)  
of (<sup>1</sup>)

Notice is hereby given that the Minister of Town and Country Planning and the Minister of (<sup>2</sup>) in pursuance of the powers vested in them by Section 13 of the Town and Country Planning Act, 1944, as applied by the New Towns Act, 1946, on the                      day of                      , 19                      , made [with modifications] (<sup>3</sup>) an Order in accordance with an application submitted to them by the (<sup>4</sup>)                      authorising the said [Corporation] [Council] to purchase compulsorily for the purposes of (<sup>5</sup>) the lands described in the Schedule hereto.

The Order contains a direction that the provisions of the Town and Country Planning Act, 1944, as applied by the New Towns Act, 1946, relating to expedited completion of purchase shall apply to the said lands, and the effect of the application of such provisions is—

- (a) the (<sup>4</sup>)                      have power on or after the (<sup>6</sup>)                      day                      , 19                      , to execute a Declaration—

(i) of their intention to enter on the whole or any part of the said lands to which the Order relates and take possession thereof at the expiration of a period specified in such Declaration, not being less than fourteen days from the completion of the service of the notice to that effect on occupiers and on persons entitled to claim compensation who have given information to the [Corporation] [Council] of the nature of the land in respect of which they are entitled to claim compensation and of their interest therein and

(ii) that the lands will vest in the [Corporation] [Council] at the expiration of the period specified in such Declaration.

- (b) At the expiration of the period specified in such Declaration, the right to enter and take possession of the lands to which the Declaration relates will vest in the [Corporation] [Council] without the previous consent of the owners or occupiers of the lands, or without compliance with the provisions of Sections eighty-four to ninety of the Lands Clauses Consolidation Act, 1845, and the lands will vest in the [Corporation] [Council] as if the [Corporation] [Council] were under that Act promoters of an undertaking having powers to execute a Deed Poll for vesting in them the lands, or any estate or interest in the lands, or for the extinguishment of any rent service, rentcharge, chief or other rent, payment or incumbrance. Such right of entry and vesting of the lands are subject to the following restrictions :—

(i) In the case of a tenancy for a year, or from year to year, or any less interest, the right of entry is not exercisable, and the vesting of the lands in the [Corporation] [Council] is subject to any such tenancy during its subsistence without prejudice to the powers of the [Corporation] [Council] under the Lands Clauses Act to require a tenant to give up possession.

(<sup>7</sup>) (ii) In the case of a tenancy having still to run only a period expiring on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the right of entry is not exercisable until the [Corporation] [Council] have served a notice to treat in respect of the tenancy, and have thereafter served a notice on every occupier of the lands in which the tenancy subsists, describing the lands to which the notice relates and stating their intention to enter on and take possession thereof at the expiration of a period (specified in the notice and not being less than fourteen days) from the date on which the notice is served, and the vesting of the lands in the [Corporation] [Council] is subject to the tenancy until the expiration of such period or the cesser of the tenancy, whichever first occurs.

A copy of the Order, and of the map referred to therein, has been deposited at \_\_\_\_\_ and will be open for inspection without payment of fee between the hours of \_\_\_\_\_

Any person entitled to claim compensation in respect of any of the land to which this Order relates may send to the [Corporation] [Council] his name and postal address; particulars sufficient to enable the [Corporation] [Council] to identify the extent and boundaries of the land; and a statement of the nature of his interest in the land, of any leases, tenancies, mortgages, covenants and incumbrances in respect of the land and of any war damage sustained by the land (<sup>8</sup>).

#### SCHEDULE

(Here insert description of the lands comprised in the said Order)

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Signature of duly authorised officer.

#### DIRECTIONS FOR FILLING UP THIS FORM

(<sup>1</sup>) Insert name and address of person on whom the notice is required to be served.

(<sup>2</sup>) Insert name of appropriate Minister.

(<sup>3</sup>) Strike out words in square brackets if inapplicable.

(<sup>4</sup>) Insert name of Corporation or Authority making the application.

(<sup>5</sup>) Insert statement of purpose as set out in the Compulsory Purchase Order.

(<sup>6</sup>) Insert a date not less than two months from the date of completion of service of notices of making of Order or such earlier or later date as may be provided by the Order.

(<sup>7</sup>) Strike out this sub-paragraph if inapplicable. If applicable insert a date as fixed by the Compulsory Purchase Order.

(<sup>8</sup>) Where the Corporation or Authority provide a form for the submission of this information, a paragraph should be added to the effect that a form for the purpose may be had on application at the offices of the Corporation or Council.

#### FORM NO. 15

#### FORM OF ADVERTISEMENT OF CERTIFICATE WHERE LAND IS GIVEN IN EXCHANGE

#### NEW TOWNS ACT, 1946

Whereas by Section 14 of the Town and Country Planning Act, 1944, as applied by the New Towns Act, 1946, it is enacted that where a compulsory purchase order under the New Towns Act, 1946, authorises the compulsory purchase by a development corporation or local highway authority of any land forming part of any common, open space or fuel or field garden allotment, for a purpose other than the widening of an existing highway the Order as far as it relates to the acquisition of such land shall be subject to special parliamentary procedure except where the

Minister of <sup>(1)</sup> is satisfied that there has been or will be given in exchange for such land other land not being less in area, and being equally advantageous to the persons, if any, entitled to rights of common or other rights, and to the public, and that the land given in exchange has been or will be vested in the persons in whom the land purchased was vested, and subject to the like rights, trusts and incidents as attached to the land purchased, and certifies accordingly.

And whereas the <sup>(2)</sup> authorises the compulsory purchase of land(s) forming part of the <sup>(3)</sup>

And whereas certain land(s) has (have) been or is (are) proposed to be given in exchange for such land(s) ;

And whereas public notice has been given by the Minister of his intention to give a certificate under the said Section 14 as respects the proposed exchange, and an opportunity has been afforded to all persons interested to make representations and objections in relation thereto to the Minister ;

<sup>(4)</sup> And whereas the Minister having had regard to representations and objections made, has caused a public local inquiry to be held into the matter of the proposed exchange.

Notice is hereby given that the Minister of <sup>(1)</sup> in pursuance of the powers enabling him in that behalf has certified that the land(s) that has (have) been or will be given in exchange for the land(s) forming part of <sup>(3)</sup> is (are) not less in area and is (are) equally advantageous to the persons entitled to rights of common or other rights, and to the public, and that the land(s) given or proposed to be given in exchange has (have) been or will be vested in the persons in whom the land(s) purchased was (were) vested, and will be subject to the like rights, trusts and incidents as attached to the land(s) purchased.

A Map (Maps) showing the area of the said land(s) given or proposed to be given in exchange for the land(s) forming part of <sup>(3)</sup> may be inspected at without payment of fee between the hours of

Dated the day of , 19 .

Signature of duly authorised Officer.

#### DIRECTIONS FOR FILLING UP THIS FORM

<sup>(1)</sup> Insert name of certifying Minister.

<sup>(2)</sup> Insert title of Order.

<sup>(3)</sup> Insert name, if any, and description of land forming part of a common, open space or fuel or field garden allotment, as the case may be.

<sup>(4)</sup> Strike out this paragraph is inapplicable.

#### FORM No. 16

#### FORM OF ADVERTISEMENT OF CERTIFICATE WHERE THE GIVING OF LAND IN EXCHANGE IS DECLARED TO BE UNNECESSARY

#### NEW TOWNS ACT, 1946

Whereas by Section 14 of the Town and Country Planning Act, 1944, as applied by the New Towns Act, 1946, it is enacted that where a compulsory purchase order under the New Towns Act, 1946, authorises the compulsory purchase by a development corporation or local highway authority of any land forming part of any common, open space or fuel or field garden allotment, for the widening of an existing highway, the Order as far as it relates to the acquisition of such land shall be subject to special parliamentary procedure, except where the Minister of <sup>(1)</sup>

is satisfied that the giving in exchange therefor of land is unnecessary, whether in the interests of the persons, if any, entitled to the rights of common or other rights, or in the interests of the public, and certifies accordingly ;

And whereas the <sup>(2)</sup> authorises the compulsory purchase of land(s) forming part of the <sup>(3)</sup> for the purposes of widening the highway known as <sup>(4)</sup>

And whereas public notice has been given by the Minister of his intention to give a certificate under the said Section 14 that the giving of land in exchange is unnecessary;

(5) And whereas the Minister having had regard to representations and objections made, has caused a public local inquiry to be held into the matter.

Notice is hereby given that the Minister of <sup>(1)</sup> in pursuance of the powers enabling him in that behalf has certified that the giving of other land(s) in exchange for the land(s) required for the widening of the highway known as <sup>(4)</sup>

is unnecessary whether in the interests of the persons entitled to the rights of common or other rights, or in the interests of the public.

A Map (Maps) showing the area of the said land(s) required for the widening of the said highway may be inspected at \_\_\_\_\_ without payment of fee \_\_\_\_\_ between the hours of \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 .

Signature of duly authorised Officer.

#### DIRECTIONS FOR FILLING UP THIS FORM

- (1) Insert name of certifying Minister.
- (2) Insert title of Order.
- (3) Insert name, if any, and description of land forming part of a common, open space or fuel or field garden allotment, as the case may be.
- (4) Insert description sufficient to identify the highway to be widened.
- (5) Strike out this paragraph if inapplicable. [2773]

\* \* \* \* \*

#### EXPLANATORY NOTE

*(This Note is not part of the Regulations, but is intended to indicate their general purport.)*

*In order to secure the development of areas duly designated as suitable sites for new towns the New Towns Act, 1946, which incorporates in part the provisions of the Town and Country Planning Act, 1944, confers upon any development corporation established under the Act and on local highway authorities certain powers of compulsory purchase. The purpose of these Regulations is to prescribe :—*

- (a) the particulars which a person entitled to notice or to compensation is required in certain circumstances to give to the purchasing authority on confirmation of a compulsory purchase order made in exercise of such powers ;*
- (b) the forms of orders and notices to be used by development corporations and local highway authorities when exercising their powers of compulsory purchase under the Act ;*
- (c) the forms to be used by statutory undertakers when making representations, in accordance with the provisions of Section 13 of the Town and Country Planning Act, 1944, with respect to a designation order made under Section 1 of the New Towns Act, or to a compulsory purchase order made for the purposes of that Act.*

### PROVISIONAL TOWN AND COUNTRY PLANNING (GENERAL INTERIM DEVELOPMENT) VARYING ORDER, 1947

P. R. & O., 1947

June 3, 1947

The Minister of Town and Country Planning hereby certifies under Section 2 of the Rules Publication Act, 1893, that on account of urgency the following Order should come into operation immediately, and in exercise of the powers conferred upon him by Section 10 of the Town and Country

Planning Act, 1932, as amended by the Town and Country Planning (Interim Development) Act, 1943, the Town and Country Planning Act, 1944 and of all other powers enabling him in that behalf, hereby orders as follows :—

1.—(1) This Order shall apply to all land in England and Wales in respect of which a resolution is for the time being in force :

Provided that in the event of a Special Interim Development Order being made in relation to any such land, this Order shall apply thereto to the extent only and subject to such modifications as may be specified in the special order.

(2) This Order may be cited as the Town and Country Planning (General Interim Development) Varying Order, 1947.

(3) Where, subject to the provisions thereof, a Special Interim Development Order in force at the date of the coming into force of this Order, applies the Town and Country Planning (General Interim Development) Order, 1946 (hereinafter called “ the principal order ”) to any area of land, the principal order so applied shall be read as if it had been amended by this Order. [2774]

2.—(1) This Order shall be read as one with the principal order, and unless the context otherwise requires, expressions in this order shall have the meanings assigned to them by the principal order.

(2) The Interpretation Act, 1889, shall apply to the interpretation of this order as it applies to the interpretation of an Act of Parliament. [2775]

3. The words “ two years ” shall be substituted for the words “ eighteen months ” in sub-paragraph (c) of paragraph 5 of Part I of the Schedule to the Principal Order. [2776]

\* \* \* \* \*

### EXPLANATORY NOTE

*(This Note is not part of the Order, but is intended to indicate its general purport.)*

*Section 10 of the Town and Country Planning Act, 1932, provides that an order made under the Section controlling the interim development of land may itself permit the development unconditionally or subject to any conditions specified in the order. The Town and Country Planning (General Interim Development) Order, 1946, permitted (Article 4 (1) and paragraph 5 (c) of the Schedule) until 30th June, 1947, development by the winning and working of minerals by surface working to be carried out on land which adjoined land being similarly developed on 1st January, 1946, provided that the development of both lands formed a continuous operation. The purpose of this Order (which comes into operation immediately as a provisional order pending the making of the substantive order) is to vary the general order by extending such permission until 31st December, 1947.*

### CASES

*Town and country planning—Agricultural land—Refusal to permit construction of a sports stadium—Over-riding need of agriculture—Town and Country Planning Act, 1932 (c. 48), s. 10 (5).*

The Minister of Town and Country Planning, in determining an appeal against the decision of a planning authority under s. 10 (5) of the Town and Country Planning Act, 1932, is entitled to refuse permission for the development of agricultural land as a sports stadium on the ground of “ the over-riding need to preserve for agricultural use any land which can be so used and is not required for essential development, even though its quality

may not be high.”—*R. v. EAST KESTEVEN RURAL DISTRICT COUNCIL, Ex parte SLEAFORD AND DISTRICT WHITE CITY SPORTS STADIUM CO.*, [1947] 1 All E. R. 310; 111 J. P. 192; 63 T. L. R. 112; 45 L. G. R. 464. [2777]

*Town and country planning—War damage—Re-development of land—Compulsory purchase—Order by Minister—Powers of Minister—Town and Country Planning Act, 1944 (c. 47), s. 1 (1).*

Before the Minister of Town and Country Planning makes an order under the Town and Country Planning Act, 1944, s. 1 (1), declaring land shown to have sustained war damage, with or without other land contiguous or adjacent thereto, to be subject to compulsory purchase he must be satisfied on reasonable grounds that such an order is requisite for the purposes to which the section refers. The matter is not so peculiarly within the administrative capacity of the Minister that the making of the order is purely a matter for his discretion so that a court of law cannot inquire into the grounds on which he satisfied himself or call his jurisdiction into question.

*Liversidge v. Anderson* ([1941] 3 All E. R. 338), *distinguished*.—*PHOENIX ASSURANCE CO., LTD. v. MINISTER OF TOWN AND COUNTRY PLANNING*, [1947] 1 All E. R. 454; [1947] L. J. R. 527; 176 L. T. 318; 111 J. P. 60; 63 T. L. R. 139; 91 Sol. Jo. 133; 45 L. G. R. 192. [2778]

*Town and country planning—War damage—Re-development of land—Compulsory purchase—Order by Minister—Powers of Minister—Town and Country Planning Act, 1944 (c. 47), s. 1 (1).*

An order, under s. 1 (1) of the Town and Country Planning Act, 1944, declaring that land in an area of extensive war damage shall be subject to compulsory purchase for dealing with war damage, is made by the Minister of Town and Country Planning as an executive authority, and he is at liberty to base his opinion on whatever he thinks fit, whether obtained in the ordinary course of his executive functions or derived from what is brought out at a public inquiry, if there is one, and the Minister cannot be compelled to disclose the source of his information. The executive act, *i.e.*, the making of the order, is not a judicial or quasi-judicial decision, and cannot be controlled by the courts by reference to the evidence or lack of evidence at the inquiry, if one is held. The words “requisite” and “satisfactorily” in the subsection clearly indicate that the question whether the Minister is satisfied that it is requisite for the purpose of dealing satisfactorily with extensive war damage that all or some part of the land in question should be laid out afresh and re-developed as a whole is one of opinion and policy, matters which are peculiarly for the Minister himself to decide, and as to which, assuming always that he acts *bonâ fide*, he is the sole judge. No objective test is possible. It is a misconception of the purpose and effect of the order, of the powers of the Minister with regard to the making of the order, and of the relevance of the proposals of the planning authority, to say that the Minister can only be “satisfied” if at the time of the order he has before him evidence sufficient in law to entitle him to be so “satisfied.” Different considerations apply in a case where a Minister can be shown to have overstepped the limits of his powers, as, *e.g.*, where the conditions in which they may be exercised are laid down in the statute and he purports to act in a case where those conditions do not exist. S. 1 (1) provides that the Minister must be satisfied that it is requisite that the land should be laid out afresh and re-developed as a whole and this need may exist although an existing building is not to be touched or is to be retained with a change of user.

*Phoenix Assurance Co., Ltd. v. Minister of Town and Country Planning* ([1947] 1 All E. R. 454), *not approved*.—*ROBINSON v. MINISTER OF TOWN AND*

COUNTRY PLANNING, [1947] K. B. 702; [1947] 1 All E. R. 851; [1947] L. J. R. 1285; 177 L. T. 375; 111 J. P. 378; 63 T. L. R. 374; 91 Sol. Jo. 294; 45 L. G. R. 497, C. A. [2779]

*Town and country planning—Resolution to prepare scheme—Scheme to include prohibition of use of land for certain purposes without consent of local authority—Validity—Town and Country Planning Act, 1932 (c. 48), ss. 1, 11.*

The respondent council passed a resolution to prepare a planning scheme under the Town and Country Planning Act, 1932. While the resolution was still in force the appellant proposed to use as a fun fair premises in an area covered by the scheme. The council, as interim development authority, served on the appellant a notice under the Town and Country Planning (Interim Development) Act, 1943, s. 5, that it was their intention to prohibit the use of the premises as a fun fair on the ground, *inter alia*, that it was intended to provide in the scheme that the use of land for a fun fair should not be commenced without the consent of the council. It was contended on behalf of the appellant that, although the council could provide in a scheme for the absolute prohibition of the use of a site as a fun fair, it was not within their powers to prohibit such use conditionally on their consent being obtained :—

*Held*: (i) since the legislative permission given by s. 1 of the Act of 1932 to make a scheme with the general object of controlling development of the land comprised in the area to which the scheme applied was in extremely wide terms and would include the control of user of land by prohibiting a particular user, it would similarly include prohibition of user without consent, because to prohibit use without consent was just as much a manner of controlling development as was an absolute prohibition, and, therefore, on the true construction of the Act, the provision was one that could lawfully be included in the scheme.

(ii) provided a provision which was proposed to be inserted in a scheme was one that could lawfully be inserted therein, the question whether it was necessary or expedient (under s. 11 (1) (a) of the Act of 1932) to insert it was a matter not for the court but for the authority who had the ultimate control of the scheme (*i.e.*, the Minister, or, in the last resort, Parliament), and the court could decide only whether the proposal in question could lawfully be inserted in the scheme and not whether it was reasonable.

(iii) the fact that neither the authority who had control of the scheme nor the Minister was bound to insert in the scheme, when it was made, any provision for an appeal against a refusal of permission by the council for use of the land as a fun fair was not sufficient to limit the general language of the Act of 1932.

*Decision of the Divisional Court* ([1946] 2 All E. R. 492), *affirmed*.—TAYLOR v. BRIGHTON BOROUGH COUNCIL, [1947] K. B. 736; [1947] 1 All E. R. 864; [1947] L. J. R. 1103; 177 L. T. 153; 111 J. P. 343; 63 T. L. R. 361; 45 L. G. R. 381, C. A. [2780]

*Town and country planning—Town planning scheme—Industrial building—Factory—Premises used for testing concrete—Town and Country Planning Act, 1932 (c. 48), s. 13 (1) (c)—Factories Act, 1937 (c. 67), s. 151 (1).*

The respondent carried on business as a consulting engineer specialising in the testing of materials used in building and engineering construction. One process carried out by him was the making and crushing of concrete blocks to test their properties, for which purpose he used a laboratory concrete mixer, six feet six inches high and three feet wide, and a crushing machine, twelve



labour to conduct these operations. The premises on which the process was carried out were within an area designated as wholly residential by the local authority in pursuance of a town planning scheme under the Town and Country Planning Act, 1932 :—

*Held* : although the main object of the process was the testing of materials, it involved the employment of “ persons . . . in manual labour . . . for . . . the making of [an] article . . . or the demolition of [an] article ” within the Factories Act, 1937, s. 151 (1), and, therefore, the premises were an industrial building and their use as such contravened the provisions of the scheme.—*HENDON BOROUGH COUNCIL v. STANGER*, [1947] K. B. 753 ; [1947] 1 All E. R. 877 ; [1947] L. J. R. 1000 ; 111 J. P. 360 ; 91 Sol. Jo. 370 ; 45 L. G. R. 347, C. A. [2781]

*Town and country planning—New town—Duty of Minister—Administrative capacity—Need to support proposed order by public inquiry—“ Bias ”—New Towns Act, 1946 (c. 68), s. 1 (1), Sched. I (3).*

Pursuant to the New Towns Act, 1946, Sched. I, para. 3, the Minister of Town and Country Planning held a public local inquiry into objections to a proposed order under s. 1 (1) of that Act, called the Stevenage New Town Designation Order, 1946, by which Stevenage was designated as a “ new town ” within the Act. In a speech at a public meeting prior to the passing of the Act, the Minister had stated that the Bill would become law, that Stevenage was a most suitable site and should be the first scheme under the Act, and that the Stevenage project would go forward. At the inquiry, no evidence in support of the order was adduced, and the objections then made were subsequently considered and rejected by the Minister. He dealt in writing with the substance of all objections except that directed to the difficulties of water supply and sewage disposal, with regard to which he said he was taking advice, having in mind a scheme which representatives of the Metropolitan Water Board and the Lee Conservancy had agreed would meet the difficulty. The appellants, who were local residents and landowners, challenged the order under s. 16 of the Town and Country Planning Act, 1944, on the grounds that (i) before considering the objections the Minister stated that he would make the order, and was thereby biased in any consideration of the objections which the Act of 1946 impliedly required should be fairly and properly considered, and (ii) the inquiry did not comply with the statutory requirements for such a public local inquiry in respect that no evidence in support of the draft order was led on behalf of the Minister :—

*Held* : (i) no judicial or quasi-judicial duty was imposed on the Minister in the discharge of his statutory duties, those duties being purely administrative ; the only question was whether he had complied with the statutory direction to appoint a person to hold the public inquiry and to consider that person's report ; and the appellants had not established either that in his speech he had prejudged any genuine consideration of the objections or that he had not genuinely considered the objections at a later stage when they were submitted to him.

(ii) the words “ in respect thereto ” in para. (3) of Sched. I to the Act of 1946 meant “ in respect to the objections ” ; they definitely limited the scope of the inquiry, and none of the general procedural provisions of s. 290 of the Local Government Act, 1933, could be held to extend its scope ; the object of the inquiry was further to inform the mind of the Minister and not to consider any issue between the Minister and the objectors, which was for the Minister thereafter to consider and decide ; and, therefore, there was no need for the Minister to lead evidence at the inquiry in support of the draft order.

*Per Lord Thankerton* : the proper significance of the word “ bias ” is to

denote a departure from the standard of even-handed justice which the law requires from those who occupy judicial office, such as an arbitrator.—FRANKLIN v. MINISTER OF TOWN AND COUNTRY PLANNING, [1948] A. C. 87; [1947] 2 All E. R. 289; 111 J. P. 497; 63 T. L. R. 446; 45 L. G. R. 581, H. L. [2782]

*Town and country planning—New town—Duties of Minister—Information as to proposed new town—Consultation—New Towns Act, 1946 (c. 68), s. 1 (1), Sched. I, para. 1.*

On July 10, 1946, three weeks before the New Towns Act, 1946, became law, a meeting took place between representatives of the Minister of Town and Country Planning and those of the local authorities concerned at which the Minister proposed to "outline the main factors which . . . led him to consider the Crawley-Three Bridges area especially suitable to be the site of the new town. . . ." On September 7, 1946, the Minister published a draft order designating a certain area at Crawley as the site of a proposed new town, and accompanied the draft with a statement that: "At this preliminary stage the intention is that the proposed new town of Crawley shall, when fully developed, be self-contained in that accommodation will be provided for a total population of about 50,000 and that a proper balance will be maintained between industrial and residential development." In a subsequent affidavit the Minister deposed that this statement contained all the information which he considered necessary for indicating the size and character of the proposed town. On October 7, 1946, a second meeting was held between representatives of the Minister and the local authorities at the latter's request, "to explain the considerations which the Minister had in mind in arriving at the boundaries of the area." Objections were raised to the proposed order and on November 4, 5 and 6, 1946, a public local inquiry was held:—

*Held:* (i) the statement which, by Sched. I, para. 1, to the Act, must accompany the publication of the draft order is to be such a statement as the Minister, not the court, considers necessary for indicating the size and general character of the proposed new town, and, therefore, the requirements of Sched. I, para. 1, in this respect had been complied with.

*Semle:* if, in any case, the Minister gives all the information which he has, the statutory requirement will not be satisfied unless that information is all he considers necessary for the specified purpose.

(ii) in considering whether or not there has been "consultation" within s. 1 (1) of the Act, between the Minister and local authorities it is necessary to look at the substance and reality of what occurred and to determine whether the local authorities have had proper opportunity of expressing their views and tendering advice.

(iii) the consultation between the Minister and local authorities prescribed by s. 1 (1) of the Act need not take place before the preparation of the draft order: it is sufficient if it takes place before the Minister makes a final order: and the proceedings of July 10 and October 7, taken together, constituted fulfilment of the Minister's obligation to consult under s. 1 (1).

*Semle:* "consultation" within s. 1 (1) could take place before the passing of the Act.

(iv) "consultation" within s. 1 (1) need not be concerned with the selection of a site; it can consist of consideration of a chosen site.

(v) A statement by a local authority that it is not interested in a proposal to designate a site does not relieve the Minister of his obligation to consult that authority, nor does the attendance of representatives of a local authority at a local inquiry after objecting to a scheme, and the urging of certain contentions at the meeting. If a local authority does not contend that it has not been consulted, it is open to another interested party to put forward that contention.—ROLLO v. MINISTER OF TOWN AND COUNTRY PLANNING, [1947] 2

All E. R. 488 ; [1948] L. J. R. 23 ; 111 J. P. 534 ; 91 Sol. Jo. 505 ; 45 L. G. R. 640 ; *affirmed*, [1948] 1 All E. R. 13 ; 64 T. L. R. 25 ; 92 Sol. Jo. 40, C. A. [2783]

*Town and country planning—New town—Duty of Minister—Consultation—New Towns Act, 1946 (c. 68), s. 1 (1).*

On July 16, 1946, the Minister of Town and Country Planning invited the representatives of six local authorities to a conference on July 26 with regard to a new town in the Hemel Hempstead district, the development of which was under consideration by him. At that conference the Minister made a statement explaining the whole project, and then invited comments and questions from the representatives of the local authorities. On August 1, 1946, the New Towns Act, 1946, became law, and on September 27, 1946, the Minister published a draft order which complied with the provisions of paras. 1 and 2 of Sched. I to the Act. Objections were made and, as a result, on November 19, 1946, the Minister attended a private meeting of the representatives of the six local authorities. At that meeting the Minister made no speech, but he invited questions. On December 2, 3, and 5, 1946, a public local inquiry was held, and on February 4, 1947, the designation order was made. It was submitted on behalf of the appellants that no proper consultation was ever held, since the consultation specified in s. 1 (1) involved an exchange of views between the Minister and those local authorities who appeared to him to be concerned and the seeking by the Minister of advice from the latter in circumstances in which it was made clear, either in express terms or by necessary implication, that a consultation for the purposes of the Act was at the time intended. It was also submitted that no purported consultation taking place before the passing of the Act could be considered to be a consultation as specified in s. 1 (1), and that, subject to its being after the Act, the logical time for such a consultation was before a draft order was made ; that, in regard to the private meeting of November 19, there were features that suggested that the meeting was not a consultation pursuant to s. 1 (1) ; that the procedure of inviting questions for answer negatived the idea of a consultation taking place ; that the fact that at the meeting the Minister imposed a stipulation that a note which was being made should not be used in any later proceedings also negatived the view that there was consultation ; that certain topics, such as the question of the water supply and of the sewerage system for the projected new town, were either expressly or impliedly stipulated not to be for discussion, that, accordingly, the Minister's mind was closed in regard to these subjects, and that, if these important subjects were excluded from discussion and the Minister was not welcoming or receiving advice on them, no consultation in any real and true sense was being held ; and that, when the evidence in regard to the meeting of November 19 is surveyed, the conclusion ought to be drawn that the Minister was giving his conceptions in regard to new towns and was explaining the reasons why he had selected Hemel Hempstead as the site of one of them, but was not consulting the local authorities :—

*Held* : (i) if a consultation precedes the making of the final order the requirements of s. 1 (1) of the Act will have been satisfied, and, *semble*, there is no reason why a meeting held before the passing of the Act should not be a consultation within s. 1 (1).

(ii) in deciding whether there has been a consultation within s. 1 (1) of the Act of 1946, the substance of the material events, and not merely their form, must be considered ; and it cannot be conclusive either way according to whether parties said in terms that a consultation under the Act was taking place, or to take place, or was intended, or whether nothing relative to this

related and must be considered together. So linked, they constituted a consultation within s. 1 (1), the procedure adopted on November 19 of inviting questions for answer and the fact that it was agreed that the proceedings on November 19 should be private not being inconsistent with there being consultation on that date.

(iii) on the facts the obligation imposed on the Minister to have consultation in accordance with s. 1 (1) had been fulfilled.

*Per Morris, J.* : the word "consultation" is one that is in general use and that is well understood. No useful purpose would be served by formulating words of definition. Nor would it be appropriate to seek to lay down the manner in which consultation must take place. The Act does not prescribe any particular form of consultation. If a complaint is made of failure to consult, it will be for the court to examine the facts and circumstances of the particular case and to decide whether consultation was, in fact, held. Consultation may often be a somewhat continuous process and the happenings at one meeting may form the background of a later one.—*FLETCHER v. MINISTER OF TOWN AND COUNTRY PLANNING*, [1947] 2 All E. R. 496; 111 J. P. 542; 91 Sol. Jo. 533; 45 L. G. R. 649. [2784]

## WATER SUPPLY

### ORDERS, CIRCULARS AND MEMORANDA :—

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### ORDERS, CIRCULARS AND MEMORANDA

#### WATER (INTEREST ON DEPOSITS) REGULATIONS, 1947

*S. R. & O.*, 1947, No. 613

*April 1, 1947*

The Minister of Health in pursuance of the powers conferred on him by section 51 of the Water Act, 1945, and of all other powers enabling him in that behalf, hereby makes the following regulations :—

1. These regulations may be cited as the Water (Interest on Deposits) Regulations, 1947, and shall come into operation on the date hereof. [2785]

2. The prescribed rate of interest to be paid by statutory water undertakers in pursuance of subsection (2) of section 37 of the Water Act, 1945, on any sum which they have required any owner of premises to deposit with them under subsection (1) of that section (which authorises statutory water undertakers, before laying mains for providing a supply of water for domestic purposes to land on which it is proposed to erect buildings, to require the owner to undertake to pay certain annual sums and, except when the owner is a local or public authority, to deposit a sum as security for the payment of the said annual sums) shall be, instead of the rate of four per cent. per annum specified by the said subsection (2), the rate of two and one-half per cent. per annum. [2786]

Circular 87/47.

To County Councils  
Borough Councils  
Urban District Councils  
Rural District Councils  
Certain Joint Boards and Joint Committees

MINISTRY OF HEALTH,  
WHITEHALL,  
LONDON, S.W.1  
12th May, 1947.

SIR,

## RURAL WATER SUPPLIES AND SEWERAGE ACT, 1944

*Rural Sewerage Schemes*

## PLANS TO BE PREPARED FOR AREAS WITH MOST URGENT NEEDS

*Cost of Schemes*

## INFORMATION TO BE SUPPLIED WITH APPLICATION FOR GRANT

1. I am directed by the Minister of Health to state that a review of a number of schemes for the sewerage of rural localities, which have been submitted in response to Circulars 119/44 and 218/45, indicates that it is desirable that local authorities should be informed more precisely of the policy and procedure in respect to rural sewerage.

2. The amount of work which can be carried out in the near future is conditioned by the amount of labour and materials that can be made available. In view of the general shortage of labour and materials, and the demands of other public services, local authorities should, in order to avoid waste of time and unnecessary expenditure, limit their first programmes to the preparation of schemes for those parts of their districts where (i) groups of some 20 or more houses, supplied or likely to be supplied with piped water, are sufficiently concentrated to enable sewers and sewage disposal to be provided at reasonable cost; or (ii) sanitary conditions are such as to call for immediate attention; or (iii) new housing development during the next few years will bring areas within either of the foregoing categories.

3. The characteristics of the areas to be sewered are too varied to admit of any general rule as to the cost of the schemes. It is, however, being found that the capital cost of straightforward schemes on these lines, at present day prices, will not exceed £50 for each property likely to be connected to the sewers; more complicated schemes may cost as much as £100 per house on the same basis; in exceptional cases the cost may be as much as £120 for each house. As a general rule, the Ministry will not, for the present, approve schemes for immediate execution if the cost exceeds these figures. If it seems probable, on the best estimates available, that the cost will be higher, the local authority should consider very carefully whether local conditions necessitate the early provision of sewerage facilities in the area concerned. If they are satisfied on this point, the Ministry should be consulted, before any further steps are taken, as to whether or not the preparation of the scheme should proceed.

4. In these circumstances it may be necessary, in a number of cases, for local authorities to re-examine schemes already in course of preparation in order to decide whether, and if so, to what extent, they will meet those conditions.

5. Local authorities are reminded that it is generally uneconomical to provide centralised sewage disposal works in rural localities unless the properties to be drained lie fairly close together. It will usually be found that a number of small works, serving separate communities, will obviate lengths of sewers through sparsely populated areas and limit pumping costs. Efficient

maintenance will often be secured by the use of mobile skilled workmen instead of by employing separate staff at each sewage works. Wherever practicable, use should be made of existing disposal works, including the works of adjacent Urban Authorities, in preference to the construction of new sewage disposal works.

6. Grants under the Rural Water Supplies and Sewerage Act, 1944, will for the present be confined to schemes which comply with the conditions of this Circular. The information set out in the Appendix should accompany every application for grant, and this information will usually be sufficient for the purposes of the local Inquiry into the scheme, which need not be held up for the preparation and submission of detailed plans, etc., since any question arising thereon can be dealt with later. In order to reduce to the minimum the number of local Inquiries, local authorities should, in their own interests, endeavour to submit a number of schemes at the same time.

I am, Sir, etc.

\* \* \* \* \*

The Clerk to the Authority.

## APPENDIX

Information to accompany an application for grant under the Rural Water Supplies and Sewerage Act, 1944, in respect of a scheme for the provision of sewerage in a rural locality.

1. Estimated cost of scheme (on current prices).
2. General District Rate (i) 1946/7 ; (ii) 1947/8.
3. Product of 1*d.* rate.
4. Expenses of existing water and sewerage services :
  - (i) Estimated net charge on general district rate in current year for existing water and sewerage services.
    - (a) Water £                      equivalent to a                      rate.
    - (b) Sewerage £                      equivalent to a                      rate, including £                      for cesspool cleansing, scavenging, etc. services.
  - (ii) Rate poundage of any precept by a Joint Board or other authority in respect of these services, not included in (i) above.
5. Council's reasons for regarding the proposals as falling within the proviso to Section 1 (1) of the Act.
6. Estimated increase in rates due to scheme, without taking into account any County Council contribution or Government grant :
  - (i) Loan charges, £                      .
  - (ii) Working expenses (details required), £                      .
  - (iii) Estimated savings, £                      .
  - (iv) Estimated revenue, e.g., from trade premises, £                      .
  - (v) Net charge on rates, £                      =                      rate in £.
7. Outstanding debt on any works to be superseded.
8. Copy of County Council's observations on scheme.
9. List of other water and sewerage schemes in contemplation in district, with approximate estimate of cost.
10. Report by Engineer or other technical advisor describing the proposed scheme, and report on existing conditions and need for scheme.
11. Estimate on K.29, general plan illustrating proposals and Form Eng. 9 for the Disposal Works.

12. The following particulars in respect of each parish to be served by the scheme (separately) :—

- (i) Population of parish (a) 1931 ; (b) Present estimated.
- (ii) Number of houses—
  - (a) now existing.
  - (b) proposed to be erected in next 3 years.
  - (c) Using pails, w.c.'s, vaults or cesspools respectively.
  - (d) On line of proposed sewers, existing and prospective respectively.  
An actual count should be made if necessary.
- (iii) Estimate of population for design purposes—based on (ii) (d).
- (iv) Average consumption of water per head per day.
- (v) Average cost of scheme (a) capital (b) maintenance, per property on the line of proposed sewers—based on (ii) (d).

13. Evidence that the land sites required can be obtained within the District Valuer's valuation.

14. Copy of resolution of Council to borrow the sum required for the scheme.  
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